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Regulator

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du Canada

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## LETTER DECISION

File OF-Fac-IPL-H141-2019-01 01  
20 May 2021

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Dear Mr. Talbot:

**Hydro-Québec TransÉnergie (HQT)  
Permit Application to Construct an Interconnection Power Line  
Appalaches-Maine Interconnection Power Line Project (Project)  
Pursuant to section 248 of the *Canadian Energy Regulator Act*  
Letter Decision**

### 1.0 Introduction and Disposition

The Commission of the Canada Energy Regulator (**Commission**) has completed its examination of the above noted Application.

On 30 September 2019, HQT applied to the Canada Energy Regulator (**CER**) pursuant to section 248 of the *Canadian Energy Regulator Act* (**CER Act**), for a permit to construct and operate a 103 kilometre (**km**) long +/- 320 kilovolt (**kV**) direct current (**DC**) power line between Appalaches substation in the municipality of Saint-Adrien-d'Irlande and a crossing point on the Canada-United States border in the municipality of Frontenac (**the Application**).

On 21 December 2020, HQT filed supplemental information with the CER, reassessing an alternative route for a small section of the power line between Thetford Mines and Saint-Joseph-de-Coleraine due to concerns raised by residents. This modification will reduce the Project length to approximately 100.8 km and is part of the route assessed by the Commission.

In its assessment of the Project, the CER received written submissions from the public, Indigenous peoples, and HQT (**the Applicant**). In reaching its conclusions, the Commission considered all of the evidence on the record related to this matter.

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## 1.1 Disposition

The Commission has considered all its obligations under the CER Act and has decided no further process is required. Accordingly, the Commission does not recommend to the Minister that the Governor in Council designate HQT's Application for a certificate process. The Commission, having satisfied itself that the construction and operation of the Project would not have any unacceptable effects on other provinces, that the Project is not likely to cause significant adverse environmental effects, and that consultation has been adequate, has issued the attached electricity Permit EP-305 (**Permit**). The Commission's analysis and conclusions in support of its decision to issue the Permit are set out below.

## 2.0 Project Overview and the CER Process

### 2.1 Project Overview

The Project involves the construction of approximately 100.8 km of +/- 320 kV DC power line between the Appalaches substation in the municipality of Saint-Adrien-d'Irlande, Québec and the New England Clean Energy Connect (**NECEC**) transmission line in the State of Maine. The Project will leave Canada at a border crossing point in the municipality of Frontenac, Québec. The proposed international power line (**IPL**) will enable HQT to provide New England with up to 1,200 megawatts (**MW**) of power at +/- 320 kV DC.

Equipment to convert alternating current (**AC**) to DC will be installed at the Appalaches substation, which will involve expanding the facility on its east side. All the work will be performed within the existing HQT property boundary.

The overall cost of the Project is estimated at \$603 million, including \$250 million for construction of the line and \$353 million for the addition of a converter and related work at Appalaches substation.

### 2.2 Legislative Framework

The CER's electricity mandate is set out in Part 4 of the CER Act. This mandate includes regulation of construction and operation of IPLs and designated inter-provincial power lines, as well as electricity exports. HQT applied for the Project under section 248 of the CER Act, which requires that the Commission must, subject to section 8 of the *Impact Assessment Act*<sup>1</sup>, issue a permit on application, except where the Governor in Council designates a proposed IPL for certification pursuant to section 258 of the CER Act.

This is the first permit application under the CER Act, which came into force on 28 August 2019. Prior to that date, Part III.1 of the *National Energy Board Act* applied to IPL projects under federal jurisdiction. The prior legislation specifically required the National Energy Board (**NEB**) to issue a permit without holding a public hearing. That restriction no longer exists, such that the Commission may select an appropriate process to assess a permit application before determining whether to recommend designation to the Governor in Council.

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<sup>1</sup> S.C. 2019, c. 28, s. 10. As the Project is not a "designated project" as defined in that Act, section 8 of the *Impact Assessment Act* does not apply.

In deciding whether to make such a recommendation, the Commission considers the criteria in subsection 257(2) of the CER Act:

- All considerations that appear to it to be relevant;
- The effect of the IPL on other provinces;
- The impact of construction or operation of the IPL on the environment;
- Any other considerations that may be specified in regulations (the current regulations do not specify any criteria relevant to such a recommendation); and
- The Commission must seek to avoid duplication with the province.

In addition, pursuant to section 56 of the CER Act, the Commission considers any adverse effects the recommendation may have on the rights of Indigenous peoples.

The Commission may decide to make the recommendation that a project requires a certificate if it believes further process is required to fully examine the application. When assessing a project for a certificate, the Commission must hold a public hearing and will look at the longer list of factors in subsection 262(2) of the CER Act, which also must be relevant and directly related to the project being assessed. At the conclusion of a certificate process and after considering those factors, the Commission decides whether the project is and will be required by the present and future public convenience and necessity.

Regardless whether the assessment is done following the permit or the certificate process, if a permit is issued under section 248 or a certificate is issued following a designation under section 258, there will be some overlapping federal and provincial jurisdiction. Certain provincial laws will apply if the province designates a regulatory agency under section 250 of the CER Act. In that case, the laws of the province, as described in sections 252 to 254 of the CER Act, apply. However, the CER will retain some oversight responsibility, primarily during construction, as noted in section 255 of the CER Act, with the province retaining a large role in the lifecycle regulation of the project.

The present Project, as applied for by HQT, is located in the Province of Québec. Most of the Hydro-Québec system is regulated provincially. The CER has jurisdiction only over the Hydro-Québec transmission lines which cross international boundaries. Pursuant to section 250 of the CER Act, the Lieutenant Governor in Council of Québec designated the provincial Régie de l'énergie (**Régie**) as the provincial regulatory agency. As part of the provincial assessment process, the Bureau d'audiences publiques sur l'environnement (**BAPE**) held a hearing process and its Investigation and Public Hearing Report (**BAPE Report**) was considered as part of the environmental analysis by the Ministry of Environment and Climate Change (**MELCC**) and by the Québec Council of Ministers. The decree authorizing the Project was adopted by the Québec Council of Ministers on 7 April 2021. The construction and operation of the IPL will primarily be regulated by the Régie.

The Commission has imposed conditions on its approval, in accordance with subsection 278(1) of the CER Act, which must be implemented by HQT. The Commission sets out conditions that it considers necessary or desirable in the public interest. The purpose of conditions is to mitigate potential risks and effects associated with a project so

that the project can be designed, constructed, operated and ultimately abandoned in a safe manner that protects the public and the environment. For each condition, the Commission has also set out a timing requirement that it considers reasonable to undertake the necessary assessment of the condition submission. Overall, the Commission has imposed 20 conditions, which are attached to electricity Permit EP-305. The CER will monitor and enforce compliance with these conditions throughout the lifecycle of the Project using audits, inspections and other compliance and enforcement tools.

### 2.3 CER Process

On 11 March 2020, the World Health Organization declared COVID-19 a global pandemic. On 16 March 2020, the CER issued correspondence describing its precautionary measures and business continuity plans related to the COVID-19 pandemic.<sup>2</sup> The Commission acknowledges that the pandemic has created extraordinary and devastating effects for all participants and notes these effects, for Indigenous peoples in particular, may be felt even more keenly. In carrying out the assessment process, the Commission consistently sought to provide all participants with fulsome opportunities to participate in the procedural steps and made diligent efforts to address concerns that were raised. The Commission appreciates the detailed submissions from participants. Despite the challenges that presented themselves during the course of this proceeding, including delays, the Commission is of the view that the assessment process fulfills its mandate under the CER Act.

The Permit EP-305 process included a number of written components, including the filing of written evidence and the testing of that evidence through written questions (known as **Information Requests or IRs**). The Commission issued four rounds of IRs to HQT to which HQT responded. Other steps included a public comment period during which potentially affected or interested parties could submit written letters of comment regarding the Application. HQT was given the opportunity to reply to all comments received. All process steps were explained in three Procedural Directives issued by the Commission, which outlined the expectations and requirements for participants associated with each procedural step.<sup>3</sup>

As required by subsection 249(1) of the CER Act, on 15 January 2020, HQT confirmed it published notice of its Application for the Project in the *Canada Gazette* Part I, *le Courrier de Frontenac*, *la Tribune*, and *The Record*, as well as provided direct notification to other utility providers. On 9 November 2020, HQT confirmed it published a second notice of its Application for the Project in the *Canada Gazette* Part I, *le Courrier de Frontenac*, *la Tribune*, and *The Record*, as well as provided direct notification to potentially affected or interested parties, including Indigenous communities and those who participated in the BAPE proceedings, other utility providers, the North American Reliability Corporation (**NERC**) and the Northeast Power Coordinating Council (**NPCC**). The second notice provided information regarding the CER's public comment period for the Application, which was open for 30 days and closed on 3 December 2020.

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<sup>2</sup> CER letter to regulated companies, all parties to active CER regulatory processes and other interested parties re COVID-19 Measures, available online at: <<https://www.cer-rec.gc.ca/en/about/newsroom/whats-new/2020/canada-energy-regulators-precautionary-measures-business-continuity-plansrelated-covid-19.html>>

<sup>3</sup> All filings associated with the permit process are available on the CER website: 2019-09-30 Application for the construction of Appalaches - Maine Interconnection Power Line Project accessible online at: <<https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3828338>>.

On or before 3 December 2020, the CER received six letters of comment from interested parties. On 17 December 2020, HQT filed its replies to these submissions.

Following a request from the Grand Chief of the Huron Wendat Nation (**HWN**), the Commission issued Ruling No. 1 on 23 December 2020 extending the deadline for HWN to provide submissions to 11 January 2021 and for HQT to provide its reply submission by 18 January 2021.

On 11 January 2021, the CER received the letter of comment from HWN and received HQT's reply to HWN's comments on 18 January 2021.

On 3 December 2020, the CER received two submissions detailing concerns that were related to upstream facilities and HQT provided its response to both submissions on 17 December 2020. Following a request by the submitters, the Commission issued Ruling No. 2 on 21 January 2021, which found that the submitters had raised specific questions relating to the scope of the Application and allowed them to file replies to HQT's comments, and HQT to subsequently file its reply.

### **3.0 Comments Related to Upstream Facilities**

#### ***Coalition of First Nations***

The initial letter of comment from the Pessamit Innu First Nation, Wemotaci Atikamekw First Nation, and the Pikogan, Lake Simon, and Kitcisakik Anishnabeg First Nations (**the Coalition of First Nations**) detailed their concerns regarding the Project. In their letter, the Coalition of First Nations stated that HQT's upstream facilities were built, and continue to be maintained and operated on their territory, without consultation and accommodation. They note that the impact study provided by HQT to the province does not include the area of the upstream facilities, where the electricity will be generated. The Coalition of First Nations states that the Crown has not respected their constitutional rights and has failed to consult with them in relation to the impacts of the construction and operation of the upstream facilities.

The Coalition of First Nations filed their reply to HQT's response on 18 February 2021, in which they detailed concerns regarding the negative impacts on their constitutionally protected rights. The Coalition of First Nations described impacts relating to the operation of the upstream facilities and increasing the production of electricity at these facilities, in particular the impacts of water level changes. The Coalition of First Nations concluded that the increased capacity was only required because of the export of electricity.

#### ***Innu Nation of Labrador***

The initial letter of comment from the Innu Nation of Labrador (**Innu Nation**) outlined their concerns, particularly about the Churchill Falls Hydroelectric Complex (**CFHC**), which they stated was built without their consent. The Innu Nation stated that construction and operation of the CFHC has caused adverse impacts and breached their rights under the *United Nations Declaration on the Rights of Indigenous Peoples* (**the UN Declaration**). Specifically, the Innu Nation states that construction of the CFHC deprived them of lands they traditionally owned and deprived them of the productive capacity of those lands, without their consent. Further, that no restitution nor compensation has been provided for these actions. The Innu Nation requests that the Project not be found to be in the public interest until HQT has

addressed these issues and that the Commission should impose a condition requiring HQT to obtain permission; or that the Governor in Council should designate the Project as requiring a certificate under paragraph 258(1)(a) of the CER Act and a public hearing held to consider the factors set out in subsection 262(2) of the CER Act.

The Innu Nation filed their reply to HQT's response on 11 February 2021, which reiterated their position that it would be contrary to the public interest to permit the Project to proceed while breaches of the UN Declaration remain unaddressed by HQT. The Innu Nation also clarified that they were not arguing that HQT owed them a constitutional duty to consult, rather, they were arguing that the UN Declaration creates express requirements to remedy past breaches and it is the failure to address these past breaches that is contrary to the public interest. The Innu Nation stated that there is a link between these breaches and the Project, which is that the Project will provide a new way for HQT to profit from the CFHC. The Innu Nation argued that the CER has broad jurisdiction to consider the articles of the UN Declaration as part of its statutory mandate.

### ***HQT's Response***

On 17 December 2020, HQT replied to the comments received from both the Coalition of First Nations and the Innu Nation. HQT stated that the Project is not associated with any particular generating station, it is intended to expand the power transmission system, from the existing power generating system. HQT stated that none of the allegations were related to the IPL contemplated by the Project. HQT stated that the Commission's evaluation of the current Project is not the appropriate venue to address historic grievances nor to consider impacts resulting from previous government actions already in effect. In addition, HQT disagreed with the Innu Nation's characterization of the Commission's public interest mandate.

In response to the concerns raised regarding lack of consultation with the Coalition of First Nations and the Innu Nation, HQT indicated that it did not consult with them because the Project is located south of the Saint Lawrence River to the American border, while the traditional territories of the Indigenous communities the Coalition of First Nations and the Innu Nation are located hundreds of kilometers to the north of the Saint Lawrence River. HQT argued that the Project would have no impact on the Coalition of First Nations' or the Innu Nation's practice of Indigenous rights.

HQT also stated that the concerns raised by the Coalition of First Nations were subject to the BAPE process and were evaluated within that process. HQT also noted that some of the allegations made by the Coalition of First Nations and the Innu Nation are the subject of legal proceedings pending before the courts.

On 16 February 2021, in its additional reply to the Innu Nation, HQT argued that the UN Declaration does not permit the Innu Nation to introduce historic issues into the Commission's current review of the Permit Project. HQT argued that the Commission's decision on the Application will not affect the ability of the Innu Nation to pursue their claims in respect of alleged infringements of their rights by the existing facilities of the CFHC, which are currently the subject of legal proceedings before the Supreme Court of Newfoundland and Labrador.

On 23 February 2021, in its additional reply to the Coalition of First Nations, HQT reiterated that the concerns raised were all related to existing facilities, which fall under provincial jurisdiction, and do not form part of the Project. Any proposed changes to those existing facilities would be regulated by appropriate government authority and would give rise to a corresponding duty to consult and accommodate. HQT also noted that certain of the existing facilities are the subject of proceedings before the Superior Court of Québec.

HQT reiterated its view that the Project has no potential impacts on the rights of the Coalition of First Nations and that the assessment of the Project should not include previously-authorized and operating upstream generating facilities.

### ***Views of the Commission***

The Commission has considered the concerns and arguments raised by the Coalition of First Nations and the Innu Nation related to the generation of electricity and the potential impacts on their traditional territory. Although the submissions raised different arguments, both are addressed here as they both relate to the impacts of upstream generating facilities.

The arguments of both the Coalition of First Nations and the Innu Nation relate to the impacts of existing upstream generating facilities. However, the Application before the Commission is for the construction and operation of the Project, a transmission line which will use electricity from existing facilities operating within their authorized parameters. No construction of new generating facilities, nor authorization to increase the capacity of a generating facility is being sought as part of this Project. Additionally, as HQT stated, the Project will transmit electricity that is generated on the Hydro-Québec system as a whole, not any specific generating facility.

The Application did not include any upstream generating facilities as part of the Project, but the Commission considered whether the effects of upstream generating facilities should be included in the assessment as being incidental to the Project. The Impact Assessment Agency has developed guidelines for determining when incidental physical activities should be included in the scope of an assessment. These guidelines are not authoritative in the present case, particularly since the Project is not a “designated project” under the *Impact Assessment Act*. However, the Commission considers them to be useful guidance for examining the possible connections between a project and incidental activities.

The Impact Assessment Agency Guidelines provide the following criteria to take into account:

- (i) nature of the proposed activities and whether they are subordinate or complementary to the designated project;
- (ii) whether the activity is within the care and control of the proponent;
- (iii) if the activity is to be undertaken by a third party, the nature of the relationship between the proponent and the third party and whether the proponent has the ability to “direct or influence” the carrying out of the activity;

- (iv) whether the activity is solely for the benefit of the proponent or is available for other proponents as well; and
- (v) the federal and/or provincial regulatory requirements for the activity.<sup>4</sup>

The Commission is of the view that criteria (i), (iv) and (v) are relevant considerations in this Application and notes the following: Regarding (i), that there are no generating facilities dependent on the Project or planned as a consequence of the Project. With respect to (iv), the generating facilities in question are used to provide electricity to the entire Hydro-Québec system and all its customers, not solely for the benefit of HQT. Finally, regarding (v), the generating facilities are provincially assessed and regulated. Having considered all relevant submissions, the specific circumstances of the Project and the above criteria, the Commission finds that a sufficient link between the Project and the generating facilities has not been established for the Commission to consider the generating facilities as part of its review of the Project. In short, the upstream facilities are not properly within the scope of the proceedings before the Commission regarding this Project.

The Coalition of First Nations argued that consultation was required because the Project would potentially impact their constitutionally-protected rights. However, the impacts described related only to the existing upstream generating facilities. They argued that these facilities were built, and continue to be maintained and operated, without consultation and accommodation. The Coalition of First Nations did not identify any concerns that were directly linked to the Project, which is the transmission line.

The law is clear that the duty to consult relates to the current decision under consideration, not previous decisions that may have breached the duty to consult.<sup>5</sup> The Commission finds that the Coalition of First Nations did not identify any novel impacts that were directly related to the Project. The Coalition of First Nations argued that the Project would result in increased impacts from the generating facilities, but no specific changes are being proposed for these facilities nor would such changes result from the Project's approval, so the Commission finds that the Project will not result in new impacts relating to the upstream generating facilities.

The Innu Nation makes a different argument, stating that the Project cannot be found to be in the public interest as long as the past and ongoing impacts of the CFHC have not been addressed. The Innu Nation refers to the UN Declaration, which sets out rights relating to restitution and compensation for previous harms. The Innu Nation argues that a new way to derive profits from the CFHC should not be allowed until previous harms have been addressed.

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<sup>4</sup> "Guide to Preparing an Initial Project Description and a Detailed Project Description," Annex I, Part B, section 9, available online at: <<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guide-preparing-project-description-detailed-project-description.html>>

<sup>5</sup> See, for example, *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, para. 487; *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, para. 41; and *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, paras. 45, 53.



As discussed above, upstream facilities such as the CFHC are not part of the Project. The Commission's role is to assess the Project; it is not the proper forum for deciding whether remedies are owed for a provincially-regulated facility that is not part of the Project. The Commission recognizes the government of Canada's commitment to implementing the UN Declaration, but does not consider that the UN Declaration extends the Commission's authority to consider historic grievances in its assessment of this Project.

The Commission is of the view that an increase in profits, which would come from electricity generated on the entirety of the Hydro-Québec system, is not an adverse effect on the rights of the Innu Nation, caused by the issuance of a permit for the Project. The Supreme Court has said that a project authorization cannot serve the public interest if it breaches the constitutionally protected rights of Indigenous peoples,<sup>6</sup> but the Commission is of the view that the applied-for permit does not cause a breach of the Innu Nation's rights. If such a breach has otherwise occurred and whether a remedy is owed, are questions that are currently before the Supreme Court of Newfoundland and Labrador and not for the Commission to decide.

The Innu Nation also asked the Commission to impose a condition that would require HQT to obtain permission from the Innu Nation to use Innu Territory for the CFHC. The Commission denies this request and will not impose that condition for the Project, because it is not directly related to the Project. In addition, CFHC is an upstream facility which is regulated provincially and no new impacts from its operation are directly related to the Project.

The Commission acknowledges the concerns raised by the Coalition of First Nations and the Innu Nation related to the generation of electricity and the potential impacts on their traditional territory, but also notes that the Project, as applied for, is not directly connected to nor dependent on any new upstream facilities. The Application before the Commission is for the construction and operation of the Project. The Commission declines to find that conditions relating to the upstream facilities are required or that further process is necessary for the applied-for permit.

For all these reasons, the Commission finds that upstream facilities are not part of the Project, and as such, the scope of this letter decision is limited to the Project and its immediate associated facilities. As detailed in **sections 4 through 9** of this Decision, the Commission is not persuaded to recommend designation of the Project pursuant to section 257 of the CER Act.

#### **4.0 Facilities, Safety and Emergency Management Matters**

##### ***4.1 Engineering Design and Construction of the New +/- 320 kV DC Line***

The proposed Project is a +/- 320 kV DC power line between the Appalaches substation in the municipality of Saint-Adrien-d'Irlande, Québec and a Canada-United States border crossing point in the municipality of Frontenac, Québec.

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<sup>6</sup> *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40.

In its Application, HQT provided a technical description of the Project with respect to its route, length, towers, conductors and other equipment. On 9 November 2020, HQT proposed a modified route which affected some aspects of the Project's technical description. In response to the Commission's IR 3.1, HQT provided an updated technical description. Namely, the IPL approximate length was reduced from 103 km to 100.8 km due to the route change. The new route also crosses a flooded mining pit at the former British Canadian mine (**the pit crossing**). Other technical aspects of the line are discussed in the sections below.

#### **4.1.1 Tower Design**

The proposed Project consists of approximately 315 towers. The proposed towers mainly consist of steel lattice and steel tubular structures, except at the pit crossing where two tetrapod-type steel structures are proposed to support the longer span (approximately 1000 m).

#### **4.1.2 Conductors**

The proposed Project consists of two poles (one positive and one negative), each pole is equipped with two conductors (total of four conductors). The proposed conductors are mainly 1400A1 aluminum wire type, except at the pit crossing where 1400A4 type conductors are proposed.

#### **4.1.3 Optical Ground Wire (OPGW)**

The proposed Project is equipped with an OPGW which will be able to withstand fault current with a maximum short circuit energy of 750 kA<sup>2</sup>·s<sup>7</sup>.

In response to the Commission's IR 2.1, HQT clarified the underlying fault current and expected fault clearing time assumptions and calculations for which the OPGW is designed. HQT also confirmed that temperature rise in the event of a fault was taken into account when determining the fault current capacity.

The OPGW design assumptions follow safe industry practices.

#### **4.1.4 Import and Export Transfer Capacity**

The proposed Project will allow for electricity to be exported from Québec to New England. At present, there are no requests from HQT system customers to import power over the IPL. As a result, the only two situations during which HQT plans to operate the line in import mode are:

- (i) during commissioning tests; and
- (ii) in exceptional cases (*i.e.*, in an emergency situation where importing electricity would help safeguard the security of the HQT system).

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<sup>7</sup> The value equivalent to the fault current of 750 kA<sup>2</sup>·s is also called the "joule integral." This value is the area under the short-circuit current curve and constitutes a measurement of the energy generated by the short-circuit current in the transmission system's resistive element.

The Project is designed to provide up to 1200 MW of incremental export capabilities to New England. With the IPL in service and accounting for electrical losses, the estimated incremental transfer capabilities are:

- 1243 MW in export mode (Québec to New England) to the border crossing point; and
- 1161 MW in import mode (New England to Québec) from the border crossing point.

In its Application, HQT stated that import capacities will be confirmed during development of the operating strategies for the Project over the months prior to commissioning.

#### **4.1.5 Reliability Requirements and Standards**

HQT confirmed the Project will comply with reliability standards of the Régie, NPCC, NERC, and the NEB Miscellaneous Order MO-036-2012.

#### **4.1.6 Other Codes and Standards**

HQT stated the Project will comply with the company's own standard HQT TET-LIA-N-CON0200 which requirements are equivalent to or exceed those of CSA C22.3 No. 1-15.

#### **4.1.7 Single Line Diagram (SLD)**

HQT requested to file their SLD confidentially. In light of concerns that the confidentiality would impede future inspection work with respect to limiting documents access in the field, the Commission requested that HQT file a simplified SLD in the public domain for unrestricted future use. On 6 September 2020, HQT filed its simplified SLD.

#### ***Comments submitted to the CER on Engineering Design and Construction***

The CER did not receive any comments related to Engineering Design and Construction.

#### ***Views of the Commission***

The Commission finds that the overall design makes use of sound engineering practice with regards to the layout, structural design, equipment selection, transfer capabilities, and reliability. The Commission is satisfied that the Project, as proposed, would meet all engineering requirements in its construction and operation. In order for the Commission to ascertain that the Project has been completed following all engineering conditions committed to, the Commission imposes **Conditions 3 and 8**, requiring HQT to design, construct and operate the Project in accordance to the specifications set forth in its Application and related submissions.

The safety standard applicable to overhead transmission lines in Canada is CSA C22.3 No. 1-15. The Commission notes that HQT designs transmission lines to be compliant with its internal standard TET-LIA-N-CON0200, which is equivalent to or exceeds the requirements of CSA C22.3 No. 1-15, which satisfies the design requirements of the CER. Therefore, the Commission is satisfied that the safety requirements as per the applicable standards are met in the design, construction and operation aspects of the Application. In order to clarify the applicable safety

parameters related to the construction, operation and maintenance of the Project, the Commission imposes **Conditions 11, 14, 15, and 17**.

The Commission notes the importance of compliance with reliability standards to ensure reliability of the bulk power system, particularly in the Eastern region where there is risk of extreme weather events. The Commission is satisfied that all reliability standards are met as the Project will comply with the NEB Miscellaneous Order MO-036-2012, reliability standards of the Régie, NPCC, and NERC, as committed to by HQT and as required by **Condition 6**.

Since HQT stated that the import limit capabilities of the IPL are yet to be confirmed, the Commission imposes **Condition 16** requiring HQT to confirm transfer capabilities limits.

In order for the Commission to ensure that commitments with respect to construction activities and scheduling are met, the Commission imposes **Condition 12**, which requires HQT to file a monthly progress report.

Lastly, in order for the Commission to ascertain that the Project has been completed following all engineering conditions of the Permit, the Commission imposes **Conditions 18 and 19**, requiring HQT to confirm condition completion and provide the as-built drawings.

#### **4.2 Emergency Management**

HQT stated that the internal standards of their prime contractor, Hydro-Québec Innovation, équipement et services partagés (**HQIESP**), are equivalent or superior to applicable CSA standard 22.03, which applies to Overhead systems. HQT also stated that the emergency plans implemented by HQT during construction and operation of its structures are multi-risk plans based on a risk analysis of all possible emergency situations that could occur at a jobsite or during operation of a structure or facility, be it a power line or a substation.

HQT stated that the HQIESP Emergency Measures Plan and Response Guide applies during construction and that its operational emergency plan takes over once the structure or facility is commissioned.

HQT stated that its Framework Prevention Program will apply to the Project. This framework addresses hazards such as working alone in a remote area, explosives, working close to a charged power line and fire. It also describes methods and equipment used to mitigate the risks from those hazards. HQT indicated that each contractor is required to submit a monthly report on accidents and lost time injuries.

#### **Comments submitted to the CER on Emergency Management**

The CER did not receive any comments related to Emergency Management.

## ***Views of the Commission***

The prevention of any accidents and malfunctions associated with CER-regulated projects is the CER's goal. In the event that an accident or malfunction does occur, the CER will hold its regulated companies accountable for an appropriate response under their Emergency Management Program.

In assessing HQT's preparedness for an emergency resulting from the construction or operation of the Project, the Commission considered the requirements of the CER Electricity Filing Manual, core elements of an Emergency Management Program, as well as the results of the BAPE Report.

The Commission finds that HQT's commitment to adhere to applicable safety standards, combined with emergency prevention, preparedness and response practices described in the Application correspond to the CER's Emergency Management expectations, which include the application of an all-hazard approach, development of specific response procedures, and links with public authorities.

## **5.0 Economic Feasibility and Need for the Project**

### ***5.1 Need for Facilities***

HQT stated that the purpose of the Project is to increase its capacity to export electricity to Massachusetts and Maine, two major markets. The Project will increase profitable exports for HQT, which, as a government corporation, pays a large dividend to the Province of Québec.

In August 2016, the State of Massachusetts passed the *Act to promote energy diversity* to promote energy diversity. Under section 83D of the *Act to promote energy diversity*, the State's electricity distributors must enter into cost-effective long-term contracts for clean energy generation for an annual amount of electricity equal to 9.45 terawatt hour (TWh) of clean energy, which includes large hydroelectricity. In accordance with the provisions of the *Act to promote energy diversity*, the distributors launched Request for Proposals 83D in March 2017.

In April 2017, the Exploitation et Hydro-Québec Production (EHQP) (Hydro-Québec's operation and generation division) asked HQT to supply firm, point-to-point transmission service to the State of Maine.

The NECEC project proposal submitted by EHQP in partnership with Central Maine Power was selected by the Massachusetts electricity distributors in March 2018.

HQT stated that none of its three existing interconnection points with New England meet EHQP's request for transmission service, as they cannot be connected to the NECEC project in Maine, and all three interconnection points are already subject to transmission service reservations and do not have the capacity to receive an additional transmission reservation of 1,200 MW.

HQT stated that the power purchase and transmission agreements with the Massachusetts distributors and Central Maine Power, which stipulate annual delivery of 9.45 TWh of energy for 20 years, show that there is an adequate market for the power line proposed in this request.

HQT provided tables that indicate there is surplus (unused heritage pool) electricity to supply the Project and HQT described the existing sources capable of providing the surplus electricity.

### ***Comments submitted to the CER on Need for the Project***

In their letter of comment, Maryse Lessard and Sylvie Leblanc stated that HQT does not have a serious financial or business plan for this Application and raised concerns that the “non-existent” business plan fails to account for financial and environmental costs associated with the exporting electricity over the power line.

### ***HQT’s Response***

In its reply to the letter of comment from Maryse Lessard and Sylvie Leblanc, HQT stated that the concerns raised were previously presented and heard before the BAPE. HQT reiterated its position that the power purchase and transmission agreements show there is an adequate market for the power line.

### ***Views of the Commission***

The Commission is satisfied that HQT has demonstrated that the Project is responding to market need and that the Project would increase the export capacity of Québec. The Commission is satisfied that HQT has demonstrated that there is adequate supply of electricity available to be transported, including surplus from unused heritage pool electricity. To facilitate compliance with section 355 of the CER Act, the Commission imposes **Condition 13**, requiring HQT to ensure that, prior to scheduling or providing transmission service to any party intending or proposing to export electricity from Canada over the Project, that party obtains all requisite export permits or licenses authorizing all such exportation.

The Commission finds that the evidence provided by HQT regarding the market conditions is sufficient to demonstrate demand for the Project. The Commission is of the view that for the Project to be used and useful, it must connect to the identified markets, therefore, the Commission imposes **Condition 7** requiring HQT to file its approvals for connecting facilities in ISO New England sixty (60) days prior to commencing construction.

### ***5.2 Ability to Finance Construction and Operation***

HQT stated that it is responsible for financing and building the Québec portion of the IPL. HQT will recover its investments from EHQP in accordance with the terms and conditions set out in the *Service Agreement for Firm Long-Term Point-to-Point Transmission Service*. HQT stated that its activities are regulated by the Régie, which approves HQT’s investments and terms of service.

HQT stated that Hydro-Québec has access to significant cash flows generated by its operations, as well as to preauthorized financing sources and a diversified portfolio of liquid financial instruments. Consequently, it has sufficient financial resources to cover items including costs that may be generated by unforeseen, project-related events.

HQT stated that the service life of the proposed IPL is estimated to be approximately 80 years as of commissioning. Rather than cease to operate the IPL within this period, HQT stated it will ensure the asset's long-term operability by conducting all required maintenance work, as is done for all other Hydro-Québec transmission system interconnections.

HQT stated that should the IPL need to be dismantled, HQT would notify the CER and then decommission the line in accordance with applicable laws and regulations. HQT stated it would finance this work in the same way it finances its transmission projects.

### ***Comments submitted to the CER on Ability to Finance Construction and Operation***

The CER did not receive any comments related to the Ability to Finance Construction and Operation.

#### ***Views of the Commission***

The Commission finds that HQT has demonstrated that it has sufficient financial resources in place to finance the construction and operation of the Project. The Commission is also satisfied that HQT has sufficient financial strength to finance the future abandonment of the Project.

## **6.0 Engagement Matters**

This section addresses HQT's public consultation program. HQT's engagement with Indigenous peoples is discussed in **section 9**.

### ***6.1 HQT's Public Engagement for the Project***

HQT stated that its community relations team is responsible for undertaking engagement with the communities within which HQT operates. Since 2018, the community relations team has met with representatives of various orders of government, including municipalities, local and regional organizations, potentially affected landowners, regional media, and citizens inside the study area in order to share information on the Project, hear concerns, and address those concerns where practicable. HQT stated that this approach allowed it to optimize its proposed route in order to reduce impacts on the landowners, municipalities, and industry. HQT committed to engaging with any interested members of the public throughout the next steps of the Project and stated that its community relations team would remain available to address community concerns once the Project becomes operational.

### ***Comments submitted to the CER on HQT's Public Engagement for the Project***

The CER did not receive any comments related to HQT's Public Engagement for the Project.

Concerns related to HQT's engagement that were raised by Indigenous peoples are discussed in **section 9.1**.

## ***Views of the Commission***

The Commission finds that HQT's engagement program and public engagement efforts were appropriate for the scope and scale of the Project. The Commission notes that the public concerns received through the CER's public comment period have been addressed and mitigated by HQT. In addition to the CER's public comment process, the Commission notes that the BAPE hearing process has already taken place and the BAPE Report has been analyzed by MELCC and approved by the Québec Council of Ministers. During the BAPE hearing process, potentially affected and/or interested parties were able to share their concerns directly with the provincial regulatory agency and HQT.

## **7.0 Land Matters**

### ***7.1 Routing***

The Project spans approximately 100.8 km between the Appalaches substation in the municipality of Saint-Adrien-d'Irlande, Québec and a Canada-United States border crossing point in the municipality of Frontenac, Québec.

In its Application, HQT submitted that for the first 79 km segment between the Appalaches substation and the outskirts of the town of Lac-Mégantic, the line will run along existing line corridors for approximately 75 km. HQT stated that due to technical constraints, it will move away from the existing lines for 4 km at the edge of the Thetford Mines mining sector. For the second, 24 km segment between the municipalities of Nantes and Frontenac, a new line corridor to the Canada-United States border crossing point must be opened. HQT stated that in total, the proposed IPL will be paired with an existing line for over 73% of its route and 99% of the IPL traverses privately-owned land.

In developing the proposed route, HQT stated that, to the extent possible, the route was influenced by the following environmental, landscape and social criteria:

- Pairing the proposed line with existing lines to minimize fragmentation of the territory.
- Avoiding existing and planned protected areas (*i.e.*, Québec provincial parks, ecological reserves and exceptional forest ecosystems, etc.), areas set aside for conservation and protected wildlife habitat areas.
- Avoiding breaking up properties by respecting cadastral boundaries.
- Taking development projects that could be affected by the running of a power line into account.
- Avoiding land reserved for horticulture and specialty crops, as well as sugar bush operations and high-potential sugar bushes; in addition, considering the siting criteria set out in the *Agreement on the Siting of Power Transmission Lines on Farms and in Woodlands* between Hydro-Québec and the Union des producteurs agricoles (**Hydro-Québec-UPA Agreement**).



- Avoiding encroaching into wetlands and buffer zones along rivers, streams and water bodies; seek to span these areas without erecting any towers within them, if the distance to be crossed allows.
- Locating the line away from summits, where it would be much more visible; avoiding valued landscape.
- Considering the questions and concerns of the population, regional administrators and organizations concerned by the project.

On 22 May, 17 July, and 21 December 2020, HQT submitted Environmental Impact Studies (**EIS**) for modified routes near Thetford Mines and Saint-Joseph-de-Coleraine. HQT stated that it consulted with the impacted communities and the MELCC regarding the proposed changes to the route.

During the BAPE hearing process, participants expressed concerns about the proximity of the Project to residential areas near Thetford Mines. Specifically, the municipality of Thetford Mines was opposed to the proposed route's proximity to the Hamel and Cité-Provence neighborhoods, as well as the Black Lake residential development. Through its own consultations with potentially impacted residents and stakeholders, the municipality of Thetford Mines found that the majority of respondents were not in favour of the initial route proposed by HQT.

By way of adopting a resolution, the Municipalité régionale de comté (**MRC**) of Appalaches supported HQT's proposed modified route because it believed that the modified route would minimize impacts.

The municipality of Saint-Joseph-de-Coleraine supported HQT's initial route because it would have less impact on the old British Canadian mine, as well as the lac Caribou and Petit lac Saint-François resorts than the modified route.

HQT filed the EIS for its final modified route with the CER on 21 December 2020. HQT stated that between 1 September and 5 November 2020 it met with citizens, property owners, and government officials from Thetford Mines and Saint-Joseph-de-Coleraine to develop the final route and to share the results of these consultations with stakeholders.

HQT also stated that this route was determined to be the preferable route by representatives of the municipality of Thetford Mines and the MRC of Appalaches since it would avoid the Black Lake residential area.

In Saint-Joseph-de-Coleraine, HQT stated that in response to the municipality's requests, it adjusted the route to the west near chemin de la Mine and confirmed that no towers would be visible from the lac Caribou resort.

### ***Comments submitted to the CER on Routing***

The CER did not receive any comments related to Routing.

### ***Views of the Commission***

The Commission notes HQT's efforts to determine an appropriate route, taking into consideration public input and land use in the area. The Commission further notes that HQT's route selection criteria, including its modified route around Thetford Mines and Saint-Joseph-de-Coleraine, considered stakeholder concerns and minimized potential environmental and social impacts. The Commission finds that this route selection criteria is appropriate as it follows existing infrastructure as much as possible, such that over 73% of the route follows the existing right-of-way (**ROW**) and therefore reduces environmental and social impacts. The Commission further notes that over 99% of the Project is located on private land. The Commission finds that the route selection and the criteria used to determine the route were acceptable and appropriate given the scope and scale of the Project. The Commission also notes that in accordance with the CER's Electricity Filing Manual, detailed route and land acquisition with respect of the Project will be carried out under provincial laws. Therefore, the Commission did not consider this information in its assessment of the Project Application. The Commission acknowledges that these matters will be considered and determined by the Province of Québec.

## **8.0 Environment and Socio-Economic Matters**

### ***Overview of HQT's Environmental and Socio-Economic Assessment***

HQT conducted an environmental and socio-economic assessment (**ESA**) for the Project, which assessed Project interactions, potential effects, proposed mitigation and predicted residual effects, including cumulative effects. HQT assessed alternatives to the Project including different routes, means and construction methods. After filing its Application for the Project, HQT reassessed an alternative route for a small tract between Thetford Mines and Saint-Joseph-de-Coleraine due to concerns raised by residents. The new modified route was accepted by the town of Thetford Mines and the MRC des Appalaches as it avoids the Black Lake residential area.

Features of the Project area include agricultural land, watercourses, wetlands, urban development and woodlands, including Parc National de Frontenac. 99% of the Project ROW is on private lands and the line will parallel disturbances for 73% of the route. HQT proposed various standard and element-specific mitigation measures to eliminate and reduce environmental and socio-economic impacts. HQT has assessed potential impacts to the biophysical and human environment and determined that the Project is not likely to cause any significant adverse effects.

### ***Public Comments submitted to the CER on Environment and Socio-Economic Matters***

As noted in **section 2.3**, the CER received a total of seven letters of comment from interested parties and an additional two reply letters of comment. HQT responded to all comments received. Generally, HQT noted that concerns raised were considered by the province in the BAPE Report and were considered as part of the environmental analysis by the MELCC and by the Québec Council of Ministers. Below are summaries of the issues raised with the Commission and HQT's replies.

### **8.1 Impacts on Wildlife and Wildlife Habitat**

The HWN raised concerns about impacts of land clearing on wildlife such as flying squirrels, bats and black bears and asked to be consulted to determine appropriate time for cutting trees and identifying bear dens. HWN also stated concerns related to fragmentation and invasive species proliferation.

#### **HQT's Response**

In its response to HWN, HQT stated that these potential impacts have been assessed in depth as part of the process assessment and review of environmental impacts and have been considered through the BAPE process. HQT noted its attempts to minimize land clearing and the impacts it could have on wildlife. For example, HQT stated it is using a new type of pylon that reduces the width of the ROW to be cleared by 10 m compared to a horizontal-armament pylon traditionally used for this type of line. In addition, HQT stated the corridor of the proposed line parallels existing disturbances for approximately 73% of its route. HQT outlined element-specific mitigation such as carrying out clearing in potential habitats of the small polatouche (flying squirrel) between 1 September and 15 April, outside the breeding period of the species.

### **8.2 Impacts on Watercourses**

Maryse Lessard and Sylvie Leblanc raised concerns about HQT's history of environmental protection, noting inadequate sediment and vegetation management adjacent to watercourses and wetlands, as well as deficient species/watercourse inventories and impact studies on the current Project.

#### **HQT's Response**

HQT responded that it adapts its vegetation management according to the environmental conditions of each watercourse to apply the appropriate mitigation on a case-by-case basis. HQT included mitigation in its ESA regarding sediment and vegetation management for wetlands and aquatic environments. HQT stated that, after clearing, it will produce an erosion prevention and sediment management plan for each tower work area that could disturb an aquatic environment or wetland. HQT further indicated that it will have an environmental follow-up program where it will evaluate the effectiveness of the mitigation measures applied and to adjust them as needed, to ensure continuous improvement.

HQT also clarified that its methods of conducted inventories are rigorous and scientifically supported which include a large variety of data collection and analysis. In addition, in its response to Commission IR No. 3.2, HQT stated that it will be completing watercourse characterizations by mid-July 2021.

### **8.3 Impacts on Wetlands**

HWN questioned how wetlands were identified, stated that it was of the view that HQT downplayed the impacts to wetlands in its Application, and requested involvement in monitoring of wetlands. In response to the BAPE Report, HWN indicated that they agreed that permanent loss of wetlands should be financially compensated and noted that they were of the view that follow-up monitoring should occur for at least 10 years.

### ***HQT's Response***

In its response, HQT noted that a detailed photo interpretation of wetland environments was conducted along the Project line and the mapping was compared to those of the Ducks Unlimited Canada wetlands and the MELCC potential wetlands, which led to the addition of wetlands to the list of those crossed by the Project. HQT stated it has been able to optimize the locations of the pylons in such a way as to avoid wetlands as much as possible and, where it was not possible to avoid them, to develop appropriate mitigation measures. In addition, HQT stated it will restore impacted wetlands and follow up over a five-year period to validate the success of this restoration. HQT also noted that for permanently impacted wetlands, HQT will provide financial compensation required under provincial regulations.

#### ***8.4 Impacts on Vegetation***

The HWN identified impacts on ash trees ("frenes noirs") as a concern to their people as these trees are threatened by the spread of the emerald ash borer and land clearing. HWN requested that HQT provide mitigation for this in collaboration with HWN who use black ash for cultural activities such as basket making. HWN also raised concerns about impacts to maple trees ("érablières") from land clearing and asked that HQT limit cutting of maple trees and plant new trees when cutting is unavoidable. HWN stated that the loss of these trees should be compensated.

### ***HQT's Response***

HQT stated that 99% of the line is on private lands. HQT further stated that owners affected by land clearing will be compensated according to the mitigation measures provided in the Hydro-Québec-UPA Agreement which also includes compensation for the development of forest management plans.

HQT further stated that it is committed to paying particular attention to the presence of ash species that could be infected with the emerald ash borer and, in the event of infection, apply the approach of the Canadian Food Inspection Agency regarding the movement of woods out of restricted areas. HQT also provided its standard environmental clauses, which include different methods for carrying out land clearing.

#### ***8.5 Impacts on Climate Change***

The Conseil du patronat du Québec (CPQ) stated that Québec's hydropower is helping to contribute to greenhouse gas (GHG) emission reduction targets and that the hydropower exports help contribute to the reduction of GHG emissions in other jurisdictions. CPQ also noted a recent study that stated that the Project could enable integration of energy sources such as wind and photovoltaic solar, which reduce the use of more polluting fossil fuels.

### ***HQT's Response***

HQT did not reply to CPQ's comments.

## **8.6 Impacts on Health**

Pierre Labranche submitted comments to the CER about the potential negative health effects of having electricity infrastructure of the Appalaches substation near residences causing electromagnetic field (**EMF**), noise, vibrations, and air pollution. Mr. Labranche expressed concerns that people living in proximity to electricity infrastructure may be at a greater risk of developing cancer and other illnesses and requested that a monitoring committee be established to collect health data and report on it annually to interested people.

### **HQT's Response**

HQT stated that Mr. Labranche's concerns were heard in the BAPE process and were considered in the ESA that was undertaken by MELCC and the Québec Council of Ministers. HQT further stated that the effects of EMF from powerlines on human health has been the subject of a large volume of studies over the last 40 years. The results of those studies are reassuring and convincing in demonstrating that there are no negative health effects from EMF. HQT submitted that the EMF produced by the proposed Project will be of comparable intensity to natural electric and magnetic fields and will not be perceptible both on the ROW and outside of it.

## **8.7 Impacts on Traditional Land Use (TLU)**

The Grand Conseil de la Nation Waban-Aki (**GCNWA**) submitted that access to the Project area is essential for practice of cultural, spiritual, and harvesting activities of the W8banaki Nation. Specifically, GCNWA highlighted the area of *Namag8nteg* (lac Mégantic) and the surrounding region as an area of great historic, cultural, and symbolic importance to the W8banaki Nation. GCNWA stated that while the W8banaki Nation may not use the specific land under the power line for traditional purposes, each additional project in the W8banaki's traditional territory diminishes access to natural areas that allow them to conduct their traditional activities and ensure the survival of their culture.

HWN submitted that the Nionwentsïo, the principal traditional territory of HWN, includes a portion of the south bank of the Saint-Laurent River and extends until lac Mégantic which encompasses the route of the entire proposed Project. HWN stated that this territory has been frequented by its members since the era of the Huron-British Treaty of 1760 and used for hunting, fishing, and planting and harvesting, including medicinal plants. HWN also stated that the nation has been harvesting black ash trees for artistry since time immemorial and expressed concerns about the trees being cut down potentially spreading the emerald ash borer.

HWN further stated that HQT's reliance on the BAPE process to address their TLU concerns is not ideal as the process is limited in scope, of short duration, and that the Project route corridor was already determined. Thus, HWN submitted, that both HQT and the BAPE process did not adequately address the nation's TLU concerns.

### ***HQT's Response***

In its response to GCNWA, HQT stated that it recognizes the importance of the Indigenous community's culture and the ability to use their traditional territories. HQT asserted that while the Project would have minimal new environmental impacts, as it is almost entirely located on private lands and the majority of the route pairs an existing corridor, it committed to having ongoing discussions with the W8banaki Nation about how to best respond to the priorities and concerns of the community.

In its response to HWN, HQT stated that in May 2020 it provided funding to the Nionwentsio office to undertake a study of the nation members' current (2015-2019) TLU in the Project area and historical and archeological aspects related to the area.

HQT stated that in September 2020, the Nionwentsio office provided HQT a copy of its current TLU report in the Project area and its surroundings. No current use (2015-2019) of the land in the Project area by HWN members was revealed in the report, but it did indicate that certain members hunt white-tailed deer in the Lac Thor section of the proposed Project. HQT stated that the section in question is located entirely on privately-owned lands and access to them requires the consent of the landowners. HQT further stated that 99% of the Project's corridor is located on private lands and the majority of the route parallels an existing powerline.

### ***8.8 Impacts on Heritage Resources***

GCNWA submitted to the CER that the community participated in the MELCC and BAPE processes and considered the issue of the protection of their heritage resources to be outstanding. Thus, GCNWA requested that Ndakina office and the community's archaeology consultant be involved with any inventory or excavations relating to heritage resources.

HWN submitted that the Project is in an area with archaeological potential and both HQT and the BAPE processes have not addressed the nation's concerns. HWN requested that the Commission require HQT to work with the nation to develop measures to protect the totality of archaeological sites identified by HWN.

### ***HQT's Response***

HQT submitted that it was open to collaborating with the GCNWA to address their concerns about preserving archaeological resources and to determine how best to include them in field excavations and inventories.

In its response to HWN, HQT stated that in May 2020 it provided the Nionwentsio office with funding to undertake an archaeological potential study. Between September 2020 and January 2021, HQT submitted that it communicated with the Nionwentsio office about potential archaeological sites in the Project area, involving HWN in field work, and potential mitigation measures. HQT stated that field work was delayed until Spring 2021 but it committed to working with HWN to continue to involve them in future field study opportunities and to develop mitigation measures aimed at minimizing or avoiding impacts on heritage resources.

### ***Views of the Commission***

HQT applied for a certificate with the Province of Québec, where interested and affected parties were able to express their concerns as part of the provincial process (considered by the BAPE and MELCC). The Commission notes the responsibility of the Government of Québec to oversee the Project as part of the province's issuance of the certificate under provincial jurisdiction. The BAPE Report provided recommendations to the province to impose conditions on its approval of the Project to protect the biophysical and human environment. These recommendations included mitigation and/or compensation measures related to issues that were raised through the CER public comment period.

The BAPE Report provided recommendations to MELCC to consider mitigation measures in its decision such as preventing propagation of the emerald ash borer, compensating forest loss, financial compensation for permanent wetland loss; and collaborating with HWN and the W8banaki Nation regarding construction monitoring on sections impacting their peoples.

In assessing the environmental effects of the Project, the Commission considered all the standard environmental elements identified in the CER's Electricity Filing Manual. The Commission is satisfied that HQT has identified and addressed environmental and socio-economic effects associated with the Project, including those raised through the public comment process. As the Commission is responsible for issuing a federal permit for the Project, the Commission also imposes conditions to enable the Commission to verify that HQT fully implements its commitments for the protection of the environment. As such, the Commission imposes **Condition 9** requiring HQT to file an Environmental Protection Plan (**EPP**) prior to commencing construction. The Commission notes that the GCNWA and HWN have outstanding concerns regarding the discovery of heritage resources in the Project area as well as acknowledges HQT's commitments to continue to collaborate with GCNWA and HWN on addressing those concerns. The Commission finds that HQT's commitments are appropriate and requires a Heritage Resources Discovery Contingency Plan to be included in the EPP as part of **Condition 9** to ensure that all potentially impacted Indigenous peoples are notified in the event of a heritage resources discovery.

Regarding outstanding watercourse characterizations, the Commission imposes **Condition 10** requiring HQT to file a Finalized Watercourse Crossing Inventory. The Commission also imposes **Condition 20** requiring HQT to file post-construction monitoring reports to verify that any possible environmental issues that may arise are identified and mitigated accordingly such as those related to activities near watercourses and wetlands.

Given the nature and scope of the Project as applied for, the mitigation measures proposed by HQT, the fact that 99% of the ROW is on private lands, and that the IPL will parallel disturbances for 73% of the route, as well as recommendations in the BAPE Report and the Commission's mitigating conditions, the Commission finds that the Project is not likely to cause significant environmental or socio-economic effects.

## **9.0 Matters related to Indigenous Peoples**

### **9.1 HQT's Engagement with Indigenous Peoples for the Project**

HQT stated that it pays particular attention to strengthening its ties with the various Indigenous communities affected by its projects. It has also been a participant in the Progressive Aboriginal Relations program as a member of the Canadian Council for Aboriginal Business since 2019. The study area for this Project contains no reserves or Indigenous settlements and does not encompass any territory currently subject to unsettled comprehensive land claims or specific claims by Indigenous communities.

HQT stated that the Project is subject to a provincial environmental impact assessment and review procedure by the MELCC which is also responsible for the process of Indigenous consultation by the Provincial Crown. At the time of submitting its Application in September 2020, the process of Indigenous consultation by the Provincial Crown was ongoing. Upon receipt of the EIS, the MELCC'S Direction de l'évaluation environnementale des projets terrestres (division for environmental assessment of land-based projects) sent a letter to the GCNWA which represents the W8banakiak communities of Odanak and Wôlinak, to ascertain their interest in participating in the Crown consultations and submitting their comments, questions and concerns about the project as part of the environmental impact assessment and review procedure.

HQT stated that the GCNWA and its member communities (Odanak and Wôlinak) affirmed that the W8banaki hold Indigenous and Treaty rights in the traditional territory known as Ndakina, which encompasses the Project study area. HQT also stated that there is an agreement in place between the provincial government and the Odanak and Wôlinak nations regarding hunting, trapping, and fishing activities. Thus, HQT focused the bulk of its engagement efforts with the GCNWA in developing its applied-for route. HQT stated that the applied-for line route will not affect the area designated for hunting, trapping and communal fishing activities.

HQT began engaging with HWN in June 2019, which resulted in a meeting being held between HQT and HWN in September 2019. HQT stated that the questions raised by the representatives of the HWN during the meeting mainly concerned wildlife conservation and archaeological work. HQT and HWN agreed to maintain the dialog to establish ways to properly identify and address the Project's impacts, if any, on the nation's members.

#### ***Comments submitted to the CER on HQT's Engagement with Indigenous Peoples for the Project***

HWN raised concerns that HQT did not engage with them in a timely manner, as further described in **section 9.3** below. The issues raised by the Coalition of First Nations and the Innu Nation are described above, in **section 3**, along with the Commission's associated findings.

#### ***HQT's Response***

HQT responded that it is committed to ongoing consultation with stakeholders to understand and address their concerns throughout the Project's lifecycle. HQT stated that the concerns raised were already considered through the BAPE process and the BAPE Report was submitted to the MELCC for review and authorization.



## 9.2 CER's Process and Participation of Indigenous Peoples

Indigenous peoples with concerns regarding potential Project-related impacts on their rights had opportunities to present their concerns directly to the Commission. While the CER requires applicants to implement an engagement program and undertake an assessment of the Project's potential effects, including environmental and socio-economic effects and impacts to Indigenous rights, the Commission also took steps to receive direct comments from Indigenous peoples. The Commission was provided with and considered information about concerns related to the Project, as well as the measures that would be required to address those concerns, as brought forward through engagement undertaken by HQT and through the letters of comment filed directly with the CER by Indigenous peoples.

As discussed in **section 2**, HQT published notification of the Application, and made communities aware of both the provincial BAPE process and the CER public comment period. The Commission, through its own assessment of publicly known or asserted Indigenous traditional territory information, also identified Indigenous communities that could be potentially affected by the Project.

On 3 January 2020, the CER sent letters to the following Indigenous communities:

- Grand Conseil de la Nation Waban-Aki
  - Abenaki of Odanak
  - Abenaki of Wôlinak
- Huron-Wendat Nation
- Mohawks of Kahnawake
- Mohawks of Kanesatake
- Mohawks of Akwesasne
- Alliance Autochtone de Québec

The letters notified the above-mentioned communities and organizations of the Project Application and the CER's engagement requirements for proponents, as well as providing a Project summary. The letters also encouraged people and communities with concerns about the Project to contact HQT first to have those concerns considered and to participate in the BAPE review proceedings.

On 13 October 2020, the Commission issued Procedural Directive No. 2 establishing a public comment period with a closing date of 3 December 2020. A letter was sent to the above-mentioned communities and organizations on 16 October 2020 again providing them with a Project summary and informing them about the public comment period.

Below are summaries of the issues raised by the GCNWA and the HWN during the Commission's public comment period, as well as HQT's replies. The issues raised by the Coalition of First Nations and the Innu Nation are described above, in **section 3**, along with the Commission's associated findings.

### **9.3 Issues and Concerns raised by Indigenous Peoples**

#### ***Grand Conseil de la Nation Wabani-Aki***

In their letter submitted to the CER, the GCNWA stated that in addition to engaging with HQT, they participated in the MELCC review as well as the BAPE process. At this stage in the Project review, GCNWA submitted that two issues remain outstanding for them:

- 1) the Project's impact on cultural and heritage resources; and
- 2) cumulative impacts on their Ndakina traditional territory affecting their preservation and continuation of the W8banaki culture.

GCNWA stated that these issues were presented to the MELCC, which is currently reviewing the submissions, and they continue to discuss them with HQT.

GCNWA requested that HQT work with them to facilitate participation of their archaeologists in field studies and any future digs.

With respect to cumulative impacts in the Ndakina traditional territory impacting the transmission of the W8banaki culture, GCNWA submitted that access to Ndakina is spiritually important to the W8banaki and cumulative impacts in the area have greatly diminished access to high quality natural areas where they can practice their rights. Thus, GCNWA requested HQT support community activities that are connected to W8banaki culture as a mitigation measure to cumulative impacts on their ability to exercise their rights.

Despite ongoing discussions regarding the management of cultural and heritage resources, as well as the impact of cumulative effects in the Project area, GCNWA stated that without clear engagement from HQT on the recommendations that they presented the company, these issues remain outstanding and the Commission should evaluate them with that in mind.

Lastly, the GCNWA stated that they disagree with the inclusion of the HWN in the hearing process as they believe that HWN is attempting to encroach on Ndakina territory without the appropriate claim to do so.

#### ***Huron-Wendat Nation***

In their submission to the CER, the HWN stated that they received no real consultation from HQT and requested the Commission do the following before issuing a permit to HQT:

- provide the nation with adequate funding so they may determine the potential effects on their ancestral rights and treaty issues;
- consult the nation on these effects and prescribe accommodations; and
- prepare a plan, in collaboration with the nation, for mitigating impacts identified by the HWN.

HWN stated that HQT's failure to adequately consult them in a timely matter could result in an infringement on their section 35 rights.

HWN stated that HQT completed its EIS between the Spring of 2018 and August 2019 without consulting the HWN. As a result, HWN stated they do not have a complete understanding of how the Project will impact their ancestral rights. HWN argued that until now, the concerns of HWN have been minimized or ignored by HQT and that the Commission must remediate these omissions before issuing a permit for this Project, and order HQT to consult the nation about their concerns.

In addition, HWN stated that in order to fulfill its accommodation obligations to mitigate impacts on HWN's ancestral rights and treaty matters, HQT must prepare a plan to prioritize contracting the nation members' businesses for construction and operation of the Project in its traditional territory.

### ***HQT's Response***

In its response to GCNWA, HQT stated that it recognizes the importance of the Indigenous community's culture and the ability to use their traditional territories. HQT submitted that it has engaged with GCNWA on their concerns and that the same concerns were raised during the BAPE process, as well as during the MELCC's review. HQT committed to continue to engage with GCNWA on involving the community in any future archaeological field work in the Project area.

With respect to GCNWA's concerns about accessing Ndkina for traditional, cultural, and spiritual activities, HQT noted in its EIS for the modified route that the new proposed route is outside of the sites that are valued for their cultural, historic, or spiritual interest by the W8banaki.

HQT argued, that even if the proposed Project would not bring many new impacts to the exercise of the W8banaki's rights since it is located almost entirely on private lands and mostly paralleling an existing corridor, it remains willing to discuss concerns with W8banaki community members and the GCNWA in order to determine how it can contribute to responding to the concerns of the community.

In its response to HWN, HQT submitted that it has been undertaking engagement activities with HWN and the Nionwents'io office since the Summer 2019. HQT stated that through the course of this engagement, HWN had the opportunity to make their Project-related concerns known to HQT through face-to face-meetings and by providing funding to HWN to complete TLU and heritage resources studies that HQT reviewed. HQT stated it disagreed with HWN's characterization of its engagement activities as being inadequate.

HQT stated that its engagement approach with HWN is appropriate and will not end once it receives its authorizations from the responsible government authorities. As such, HQT proposed the following next steps:

- Information sharing during all phases of the Project, including a public call for contractors so HWN can apply for the jobs;
- Considering the results of the archaeology report to be completed and submitted by the Nionwents'io office in Spring 2021;
- Continuing to discuss archaeological matters as requested;

- Continuing to discuss how to involve HWN and the W8banaki in the development of plans for their participation in archaeological field studies.

### ***Views of the Commission***

In considering the concerns of Indigenous peoples and HQT's responses, the Commission is also mindful of avoiding duplication with the provincial MELCC and BAPE processes. The Commission has considered all the submissions from Indigenous peoples, including the concerns of the Coalition of First Nations and the Innu Nation related to upstream facilities, which are addressed in **section 3**.

The CER expects an applicant to design and implement its engagement activities with regard to the nature and magnitude of a project's potential impacts both from early in the design phase and into the future operational phase of a project. Where there is a greater risk of more serious impacts on interests, including rights of Indigenous peoples, (which would, in part, depend on the nature of that interest), the CER has greater expectations in terms of the applicant's consultation with potentially impacted Indigenous peoples. In contrast, where there is a remote possibility of an impact on interests of Indigenous peoples, or the impacts are minor in nature, the applicant's engagement will generally not be expected to be as extensive.

Pursuant to the CER's Filing Manual requirements, HQT provided technical information addressing impacts of the Project on, among other things, wildlife, vegetation, and heritage resources. Further, HQT was required to make all reasonable efforts to engage with potentially affected Indigenous peoples and to provide information about those engagement activities to the Commission.

The Commission finds that HQT's design of its Project-specific engagement activities was adequate given the scope and scale of the Project. The Commission notes HQT's commitment to ongoing engagement with Indigenous peoples, in particular its ongoing dialogue with the GCNWA and HWN.

In assessing potential impacts on the interests of Indigenous peoples, the Commission assessed the information provided in HQT's Application regarding potential impacts on the interests of Indigenous peoples, including rights, the concerns raised by Indigenous peoples, and the measures that HQT has proposed to minimize or eliminate the Project's potential impacts on the interests of Indigenous peoples.

GCNWA and HWN raised concerns regarding the impact of the Project on archaeological resources in the area, as well concerns raised regarding traditional activities, customs, and practices, such as hunting and trapping. They also raised concerns regarding cumulative impacts, community development, and access to traditional territory.

The Commission notes that the Project is located primarily on privately owned land with limited access by Indigenous peoples. In addition, the modified route is outside of the valued sites identified by the GCNWA. The Commission has assessed the mitigation measures proposed by HQT related to hunting and trapping, as well as heritage and cultural resources. The Commission finds that the proposed Project is

not likely to have an adverse effect on the current use of lands and resources for traditional purposes by Indigenous peoples. The Commission further notes that environmental concerns such as archaeological resources and TLU raised by Indigenous peoples are discussed in **section 8**.

The Commission has evaluated the consultation undertaken with respect to this Project. This evaluation includes the engagement activities performed by HQT and the consultation undertaken through the CER's project assessment process, noting also the provincial processes. The Commission has also considered the mitigation measures proposed to address the various concerns and potential effects. The Commission finds that there has been adequate consultation and accommodation for the purpose of the Commission's decision on the Project. The Commission also finds that any potential Project-related impacts on the interests, including rights, of affected Indigenous peoples are not likely to have an adverse effect and can be effectively addressed. As a result, the Commission finds that the issuance of a permit under section 248 of the CER Act is consistent with section 35 of the *Constitution Act* and the honour of the Crown.

## 10.0 Conclusion

Permit EP-305 gives effect to this decision.

The Commission thanks all participants for their helpful submissions and participation in this process.

Yours sincerely,

*Signed by*

Jean-Denis Charlebois  
Secretary of the Commission

Attachment

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