



## LETTER DECISION

File OF-Fac-IPL-H141-2016-01 01

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Dear Mr. Verret, Ms. Marchand and Ms. Couture:

**Hydro-Québec TransÉnergie (HQT)  
Permit Application for the Quebec-New Hampshire Interconnection  
Pursuant to section 58.11 of the *National Energy Board Act*  
Application to amend the definition of the 450 kV Interconnection  
Quebec-New England in Certificate EC-III-021  
Letter Decision**

The National Energy Board (NEB or Board) has completed its examination of the above noted applications.

On 23 December 2016, HQT applied to the National Energy Board pursuant to subsection 58.11(1) of the *National Energy Board Act* (NEB Act), for a permit to construct and operate a 79.2 kilometre (km) long 320 kilovolt (kV) power line from just north of Sherbrooke, Quebec to the New Hampshire border (Permit Project).

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On 28 February 2017, HQT applied to the Board to vary its EC-III-021 Certificate, modifying the definition of the authorized facility as described in Condition 2 of that Certificate. The modification proposed includes the reconfiguration of the power lines that exit the Des Cantons substation including the re-use of a 4.2 km section of the 450 kV Nicolet-Des Cantons International Power Line (IPL), so that the 4.2 km segment can be operated at 320 kV (Variance Application). HQT confirmed that the Variance Application is contingent on the issuance of the Permit for the Permit Project, and so the Board, on its own motion, assessed the Permit Project and Variance Application concurrently.

As the final decision maker on a permit application, the Board has decided to issue the electricity permit EP-303 (Permit), the effect of which is to approve the Permit Project. The Board has also decided to grant the Variance Application and will take the appropriate steps to vary the EC-III-021 Certificate through issuing MO-020-2018 (MO). The Board's analysis and conclusions in support of its decision to issue the Permit are set out below. In its assessment of the Permit Project and Variance Application, the Board received written submissions from the public, Aboriginal groups, and the Applicant, HQT. In reaching its conclusions, the Board considered all of the evidence on the record related to this matter.

## **1.0 Project Overview and the NEB Process**

### ***1.1 Project Overview***

The Permit Project involves the construction in Quebec of approximately 79 km of 320 kV direct current (DC) bi-pole overhead transmission line between Des Cantons substation and the Quebec–New Hampshire border. The Permit Project will consist of two direct current poles, one positive (+ 320 kV) and one negative (- 320 kV). The interconnection will provide New England with up to 1,090 megawatt (MW) of power at +/-320 kV DC. The interconnection equipment configuration will also allow for electricity to be imported from New England. At the Canada/United States (US) border, the Permit Project will connect to the line planned as part of the Northern Pass Project owned by Northern Pass Transmission.

Pursuant to section 58.17 of the NEB Act, the Lieutenant Governor in Council of Quebec designated the provincial Régie de l'énergie du Québec (Régie) as Quebec's regulatory agency.

### ***1.2 NEB Process***

As required by subsection 58.12(1) of the NEB Act, HQT published notice of its application for the Permit Project in the Canada Gazette Part I, La Tribune and The Record on 23 December 2016, as well as provided direct notification to other utility providers. Following the Process Procedures set out in the Board's *Memorandum of Guidance to Interested Parties Concerning Full Implementation of the September 1988 Canadian Electricity Policy* (Revised 23 January 2003), HQT's notices stated that concerns about the application should be filed with the Board and the Applicant within 30 days. The comment period ended 23 January 2017. During this comment period, the public could file comments regarding subsection 58.14(2), regarding whether the Board should consider the Permit Project under section 58.16 of the NEB Act.

On or before 23 January 2017, the Board received 11 letters of comments, and received HQT's reply on 7 February 2017. On 2 August 2017, 8 September 2017, 26 October 2017, and 14 December 2017, the Board received additional letters of comment from Aboriginal groups. On 1 September 2017 and 9 November 2017, the Board received HQT's replies to those additional letters.

The majority of the letters received raised concerns which the Board determined to be within the scope of the assessments.

### ***Comments related to upstream facilities***

The Board received three letters from the Innus de Pessamit, dated 2 August 2017, 8 September 2017, and 14 December 2017, detailing their concerns regarding the Project, HQT's consultation efforts, and the provincial consultation process. One of the letters filed with the Board also outlined the efforts of the Innus de Pessamit to have their concerns heard across a number of provincial and federal departments.

The Innus de Pessamit detailed their concerns regarding HQT's hydraulic management of the rivers and reservoirs located in their traditional territory. The Innus de Pessamit argued that approval of the Project will require an increase in electricity generation, and subsequent negative environmental effects and impacts to their traditional activities. The Innus de Pessamit noted several concerns regarding impacts on the Manicougan reservoir and Betsiamites River, and subsequent impact on traditional activities and resource use, such as fishing.

The Innus de Pessamit indicated that due to the above noted impacts, their ancestral and territorial rights are being infringed upon, they should be consulted by HQT regarding the Project. The Innus de Pessamit further raised concerns regarding provincial consultation and the hearing process of the Bureau d'audiences publiques sur l'environnement (BAPE).

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

HQT replied (on 1 September 2017) that the Permit Project is not associated with any specific generating station, and that there is no direct link between the Project and the reservoir, which is several hundred kilometres from the Project-area.

In response to the concerns raised regarding lack of consultation with the Innus de Pessamit, HQT indicated that it did not consult with the Innus de Pessamit, as their traditional territory is located several hundred kilometres away from the Project study area, and the Innus de Pessamit do not use or frequent the Project area. HQT also reiterated that the concerns raised by the Innus de Pessamit were subject to the BAPE process, and were evaluated within that process.

### ***Views of the Board***

The Board notes the concerns of the Innus de Pessamit related to the generation of electricity and reservoir management, and the potential impacts of these on its traditional territory, but also notes that the Permit Project as applied for is not dependent on any new

upstream facilities. The application before the Board is for the construction and operation of the Permit Project. The Board is of the view that upstream facilities are not part of the Permit Project, and as such, the scope of this letter decision is limited to the Permit Project and its immediate associated facilities.

As detailed in Sections 4 through 7 of this Decision, the Board was not persuaded to assess the Permit Project under section 58.16 of the NEB Act.

## **2.0 Engineering Matters**

### ***2.1 Design and Construction of the New 320 kV Line***

This section discusses the Permit Project. Refer to Section 2.2, for discussion regarding the Variance Application.

#### **2.1.1 Tower Design**

The Permit Project will consist of two direct current poles, one positive (+ 320 kV) and one negative (- 320 kV), supported upon 218 lattice steel towers, with an average span of 370 metres (m) between towers. Since the Permit Project is the first 320 kV DC line built by HQ, a new tower design is proposed.

When the Permit Project runs alone, the line will have a 53 m wide right-of-way, as shown in Figure 1 for both guyed and self-supporting configurations. Along segments where the Permit Project runs parallel to the existing 450 kV DC line, the two rights-of-way will overlap about 10 m, giving the combined right-of-way a total width of 103 m.

#### **2.1.2 Import and Export Transfer Capacity**

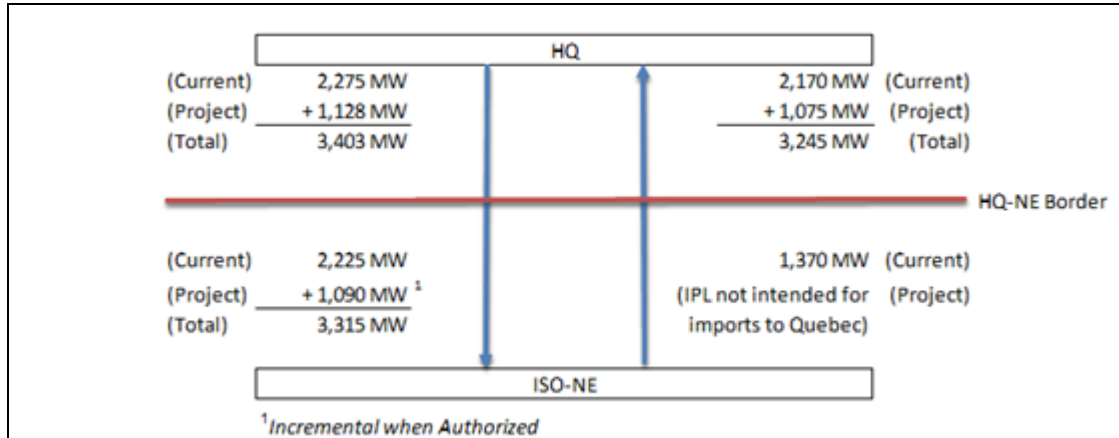
The goal of the Permit Project is to increase HQT capacity to export power into the New England grid. Figure 1 summarizes the current and future (with the Permit Project in service) import and export transfer capacities between Quebec and New Hampshire. The estimated incremental transfer capacity with the Permit Project in service is:

- 1) 1,128 MW in export mode (from Quebec to New England); and
- 2) 1,075 MW in import mode (New England to Quebec).

Note that although the Des Cantons converter station has an export capacity of 1,128 MW (based on converter station equipment capability), the maximum incremental transfer capacity from Quebec into New Hampshire is limited to 1,090 MW under the terms of an authorization issued by ISO-NE on July 19, 2016.

The HQT grid import capacity of 1,075 MW is estimated and must be confirmed later via studies. HQT notes in its response to Board's Information Request (IR) 1.6 that the Permit Project is not intended for import (i.e., New England to Quebec) to explain why HQT has not yet conducted studies to confirm the Permit Project import capacity.

**Figure 1 – Existing and Incremental Import and Export Transfer Capacity**



Source: Hydro-Québec TransÉnergie (response to IR 1.6)

### 2.1.3 Reliability

Since the Hydro-Québec and New England grids are not synchronized, they must be interconnected using asynchronous direct current technology. A new alternating current to direct current power converter will therefore be installed at the Des Cantons substation, which has sufficient space to accommodate it.

Des Cantons substation has been chosen as the starting point for the new transmission line for several reasons, including that the Des Cantons substation:

- 1) is the closest 735-kV class transmission substation to the Canada/US border;
- 2) is already connected to the Hydro-Québec grid by three 735-kV lines, providing it with a reliable supply of power, and;
- 3) already has an existing transformer capacity at the substation sufficient to supply the Permit Project.

### 2.1.4 Codes and Standards

The Permit Project states that:

- 1) the Permit Project will comply with the reliability standards of the Régie, Northeast Power Coordinating Council (NPCC), and the North American Electric Reliability Corporation (NERC); and,
- 2) the Permit Project will be operated in compliance with the *National Energy Board General Order MO-036-2012* for electricity reliability standards.

The safety standard applicable to the design of overhead transmission lines in Canada is the Canadian Standards Association (CSA) C22.3 No. 1-15. HQT designs transmission lines to be compliant with the internal standard TET-LIA-N-CON0200. The latter standard is equivalent to or exceeds the requirements of CSA C22.3 No. 1-15. It is noted that CSA C22.1-15 Canadian

Electrical Code, Part I for Electrical Installations, does not apply to installations or equipment used by electric utilities.

### ***Views of the Board***

The Board is of the view that the overall design of the proposed 320 kV Permit Project makes use of sound engineering practice in respect of structural design, layout, line and structure numbering, equipment selection, transfer capacity and reliability.

CSA C22.1-15 does not apply to installations or equipment used by a public grid for electric distribution. The standard applicable to overhead transmission lines is CSA C22.3 No. 1-15. HQT designs transmission lines to be compliant with the internal standard TET-LIA-N-CON0200, which is equivalent or exceeds the requirements of CSA C22.3 No. 1-15. In order to clarify the applicable safety parameters related to the construction, operation and maintenance of the Permit Project, the Board has imposed **Permit Conditions 7 and 12**.

Additionally, the Permit Project will comply with the reliability standards of the Régie, NPCC, and NERC, as committed to by HQT and as required by **Permit Condition 8**. The Board has also imposed **Permit Condition 14**, requiring HQT to file with the Board any deviation from **Permit Condition 8** that HQT may experience during the operation of the Permit Project.

In order for the Board to ascertain that the Permit Project has been completed following all engineering conditions of the Permit, the Board has imposed **Permit Conditions 15 and 16**, requiring HQT to confirm condition completion and provide the as-built drawings.

The Board is satisfied that the construction, operation and maintenance of the Permit Project would meet all standards and requirements related to safety, reliability, and engineering.

## ***2.2 Design and Construction of the New 450 kV Line***

This section discusses the Variance Application, to reconfigure the existing 450 kV DC lines which presently terminate at the Des Cantons substation. Refer to Section 2.1 for discussion regarding the Permit Project.

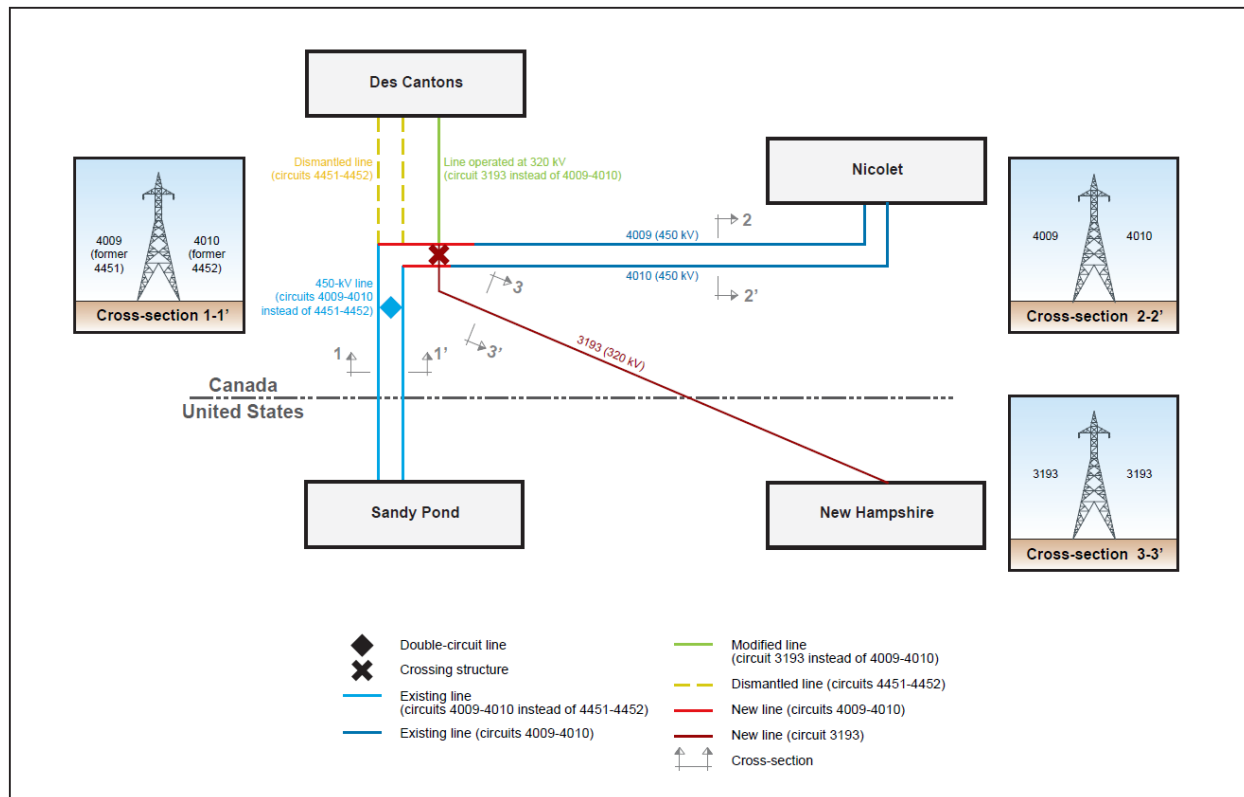
### **2.2.1 Layout**

To implement the proposed 320 kV Permit Project, the existing 450 kV lines near Des Cantons Substation must be reconfigured. Figure 2 shows the proposed reconfiguration. As shown in Figure 2, the reconfiguration proposes to:

- 1) join lines 4009-4010 from Nicolet to the portion of lines 4451-4452 which go to Sandy Pond;

- 2) dismantle/salvage a section of the 4451-4452 lines coming out of Des Cantons;
- 3) downgrade the remaining section of the 4009-4010 lines coming out of Des Cantons +/- 320 kV operation and join to the new section of the Permit Project.

**Figure 2 – Future Configuration**



Source: Hydro-Québec TransÉnergie (response to IR 3.1)

## 2.2.2 Crossing Structure

At the crossing structure shown in Figure 2, the proposed 320 kV line will run beneath the 450 kV line and connect to a set of rigid busbars. A steel structure will be erected above the 320 kV busbars to protect them from making electrical contact with any conductors that may fall from the line above.

## 2.2.3 Reliability

HQT notes in its response to IR No. 1 on May 15, 2017 that the reconfiguration of the 450 kV line will have no significant impact on either the Canadian or the US grids in respect of either reliability or transfer capability.

## 2.2.4 Codes and Standards

In its capacity as transmission provider, HQT complies with the most recent reliability standards adopted by the Régie, NPCC and NERC. Since the reconfigured 450 kV IPL will remain within

the HQT transmission system, its operation will comply with all applicable Régie, NPCC and NERC reliability standards. Moreover, the 450 kV IPL will continue to be operated in compliance with the *National Energy Board General Order for Reliability Standards* No. MO-036-2012.

### ***Views of the Board***

The Board is of the view that the Variance Application is necessary to enable the operation of the Permit Project. It is also of the view that the overall design of the Variance Application makes use of sound engineering practice with regards to the structural design of the crossing structure, layout, line and structure numbering, equipment selection, transfer capacity and reliability.

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

As the operation of the Variance Application will comply with the reliability standards of the Régie de l'énergie of Québec, NPCC, and NERC, the Board is satisfied that all reliability standards are met.

In order for the Board to ascertain that the Variance Application has been completed following all engineering conditions committed to, the Board has imposed **MO Conditions 4 and 5**, requiring HQT to confirm condition completion and provide the as-built drawings. The Board is satisfied that the Variance Application would meet all engineering requirements in its construction and operation.

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

In making its determination on the economic feasibility of a proposed project and related facilities, the Board assesses the need for the project and the likelihood of the project being used at a reasonable level over its economic life. To make this determination, the Board considers the evidence filed regarding the supply of electricity that will be available to be transported, the underpinning transmission contracts, and the availability of adequate markets to receive the delivered electricity.

### ***3.1 Need for Facilities***

HQT stated that the purpose of the Permit Project is to increase its capacity to export electricity to New England, a major market. The Permit Project will increase profitable exports for HQT, which, as a government corporation, pays a large dividend to the Province of Quebec.



HQT stated that in 2015, it supplied 10% of energy demand in New England. According to HQT, the new transmission line's capacity corresponds to 7% of the electricity consumption of the New England states. HQT asserted that, in the short term, this region will require greenhouse gas intensive internal power generation capacity to decline by 30% to meet its greenhouse gas emission reduction targets. Most of the electricity generated by HQT being carbon neutral, this transmission line will allow New England to have access to a reliable and clean source of energy.

### *Views of the Board*

The Board is satisfied that HQT has demonstrated that the Permit Project is responding to market need and that the Permit Project would increase the export capacity of Quebec. To facilitate compliance with section 119.02 of the NEB Act, the Board imposes **Condition 5**, 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 Board finds that the evidence provided by HQT regarding the market conditions is sufficient to demonstrate demand for the Permit Project. The Board is of the view that for the Permit Project to be used and useful it must connect to the identified markets, therefore, the Board imposes **Condition 11** requiring HQT to file its approvals for connecting facilities in ISO New England sixty (60) days prior to beginning construction.

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

HQT stated that the estimated Project costs are \$125 million (Canadian). It further stated that its activities are regulated by the Régie, which sets the transmission rates on the basis of cost of service. The Régie also approves HQT's investments and conditions of service. HQT filed annual reports for itself and the operator of the US portion of the Permit Project, indicating their respective financial strength and ability to finance the construction of the Project.

With respect to the financial responsibility for covering costs if an incident were to occur, HQT indicated that it requires the contractor responsible for construction of the Permit Project to provide proof that it has paid a bid bond and holds an insurance policy before the contract is awarded. Should an incident occur during construction of the Permit Project, the contractor shall be responsible for implementing the emergency measures plan and shall assume all costs associated with the incident.

Regarding its financial responsibility for paying costs if an incident were to occur during operation of the Permit Project, HQT stated that its parent company Hydro-Québec holds a corporate general civil liability insurance policy covering damages to third parties arising from its regular activities, including the activities of HQT. The policy has a coverage limit of \$1 billion and a deductible of \$50 million. Additionally, HQT stated that Hydro-Québec has access to major cash flows from operating activities and pre-authorized financing sources, as well as to a diversified portfolio of liquid financial instruments.

### *Views of the Board*

The Board is of the view that HQT has demonstrated that it has sufficient financial resources in place to finance the construction and operation of the Project. In addition, HQT has provided information on insurance coverage during construction and operation of the Permit Project, demonstrating adequate financial responsibility that costs will be covered if an incident were to occur with the Permit Project. The Board has before it only evidence of the financial resources of HQT, therefore, the Board imposes **Condition 3** requiring HQT to notify the Board of any changes in the identity of the owner or operator of the Project authorized by this Permit.

### **3.3** *Eventual Abandonment*

When a company whose infrastructure is regulated by the NEB wants to abandon a power line, or part of one, it must file an application to the Board that includes details on safety, environment, and discussions with all potentially affected persons or groups. The Board considers the application and, if the Board approves the applications, the Board may impose conditions and will monitor the abandonment activities. The company is responsible for funding the abandonment of the facilities as well as any ongoing conditions imposed by the Board as a result of its decision on an abandonment application.

HQT provided evidence that its abandonment cost estimate (ACE) for the Project is approximately \$11.3 million with abandonment work requiring five months to complete. HQT indicated that included within that ACE were the following costs:

- Conductor removal: \$3.3 million
- Tower dismantling: \$3.0 million
- Anchor bar and foundation column leveling: \$1.0 million
- Site restoration: \$1.0 million
- Jobsite management: \$1.0 million
- Material recovery: \$2.0 million

HQT stated that financing for abandonment activities would be handled in the same way as it finances all transmission projects.

### *Views of the Board*

The Board is satisfied that HQT has sufficient financial strength to finance the future abandonment of the Project. The Board approves the ACE of \$11.3 million filed by HQT for the Permit Project. The Board reminds HQT that a decision regarding its ACE does not constitute a decision on HQT's future abandonment plans, and that HQT will be required to apply to the Board to abandon the Project.

## 4.0 Public Consultation

This section addresses HQT's public consultation program. HQT's engagement with Aboriginal groups is discussed in Section 7.

As part of its public participation process, HQT developed a community relations program to provide information about the Project, respond to stakeholders' requests for specific information, and to hear Project-related concerns from the public. This was done through in-person meetings with representatives of various levels of government, official community representatives, landowners, citizens, community organizations and local media. HQT also indicated that it held one-on-one meetings with each of the 170 landowners affected by the Project.

HQT's consultation also focused on the proposed route and its variants. Working meetings were held with the three Regional County Municipalities affected, the municipalities of Val-Joli, Stoke, Ascot Corner, Cookshire-Eaton, Sainte-Edwidge-de-Clifton, Saint-Herménégilde and East Hereford, the Fédération de l'UPA Estrie, Forêt Hereford, the Nature Conservancy Canada, the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC), the Ministère des Forêts, de la Faune et des Parcs and the Ministère de la Santé et des Services sociaux. Consultation with affected landowners occurred through both open houses and direct meetings with all the landowners along the route. HQT noted several concerns that were raised by landowners through consultation. These are discussed further in Section 5 and Section 6 of this Decision.

Based on public input through HQT's community relations program, HQT stated it came to the following conclusions:

- running the proposed power line to the east of the existing 450-kV line will generate fewer impacts on landowners and the environment;
- there is public consensus in favor of the variant proposed for the south part of the line route, which would have the line running west of Mont Hereford; and
- affected landowners and community representatives are satisfied with HQT's efforts to optimize the preferred line route.

HQT stated that feedback received through its community relations program helped determine the route with the least social, environmental, technical and economic impacts. HQT also stated that it will continue to communicate with community representatives, the public and landowners during the Project's construction. Once the line is operational, HQT stated that its community relations unit will remain available to address community concerns.

### ***Public Comments submitted to the NEB on public consultation***

Following the NEB's requirements regarding a Permit application, on 23 December 2016 HQT published a notification of the Project application in the Canada Gazette Part I, La Tribune and The Record, as well as sent a direct notification to other utility providers.

The notification had a comment period associated with it, where the public could file comments with the NEB by 23 January 2017. The NEB received 11 letters of comment regarding the application. HQT responded to the comments on 7 February 2017.

Some of the comments received from the public and landowners focused on HQT's public consultation program. Stakeholder groups, including the Nature Québec, Réseau de milieux naturels protégés, Deux Pays, Une Forêt, Corridor appalachien, Forêt Hereford Inc., Conseil régional de l'environnement de l'Estrie, and the Conservation de la nature Canada, indicated that HQT ignored community feedback and consultation on the route, specifically concerns with the route through Forêt Hereford. In its letter of comment, Forêt Hereford Inc., stated that HQT only presented four routing options using above ground powerlines through the Forêt Hereford and that Forêt Hereford Inc., was not given the opportunity to present alternatives. Nature Quebec submitted that HQT misrepresented its conclusions that the West Variant B is preferred and supported by the public. Further, Nature Quebec disagreed that consensus was achieved through HQT's consultation on West Variant B.

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

HQT replied that consultation has been ongoing and that the company took into consideration public and landowner concerns it received during its public consultation process when designing the route, especially those related to the southern portion of the route through Forêt Hereford. Four route variations were considered and studied. HQT indicated that it focused its public consultation in that area with open houses geared towards landowners. Private meetings were also held with landowners. HQT stated that it selected the West Variant B route and confirmed this as the preferred route through consultation. HQT also stated in its response to the comments that the concerns raised were already considered through the BAPE process. The BAPE's report was reviewed by the MDDELCC and the Conseil des ministres du Québec when making a decision on the provincial authorization.

HQT also committed to ongoing consultation with stakeholders to understand and address their concerns.

### ***Views of the Board***

The Board is of the view that HQT's consultation program and public consultation efforts were appropriate for the scope and scale of the Permit Project. The Board is also of the view that HQT has adequately identified and engaged stakeholders, developed engagement materials, notified stakeholders of the Permit Project, and responded to their input. The Board notes that the public concerns received through the comment period have been addressed and mitigated by HQT.

In addition to the Board's public comment process, the Board notes that the BAPE process has already taken place and the BAPE Panel has delivered its report to the provincial MDDELCC Minister, who then approved Permit Project and issued a certificate under provincial legislation. During the provincial process, affected parties were able to share their concerns directly with the BAPE Panel and HQT.

## 5.0 Land Matters

### 5.1 Routing

HQT stated its initial above ground route selection was based on technical and environmental studies, as well as stakeholder input. HQT's route selection criteria included:

- using the existing right-of-way, to the extent possible;
- avoiding sensitive environmental areas, including farmland;
- avoiding valued landscape; and
- taking into consideration stakeholder concerns on routing.

HQT indicated that the Permit Project is located entirely on private land, with over 80% of the Permit Project being adjacent to the existing line.

HQT divided the route into two parts: 1) the northern part, which follows the existing right-of-way for 60.7 km, and 2) the southern part, which requires new right-of-way. HQT considered four route variances for the southern part of the route.

HQT stated that the southern part of the route cannot share the existing right-of-way because of where the line must cross the border into New Hampshire from the municipality of East Hereford. HQT broadened the study area along this part of the route to approximately 15 km to consider the route variances. HQT noted several elements impacting routing, including Mont Hereford and the Réserve naturelle Neil-et-Louise Tillotson. HQT stated that it was impossible to avoid the Forêt Hereford, which covers more than 5,000 hectares in the Project area. The company also noted that going around the forest would have increased the length of the line considerably, increasing both the Project's impact and costs. Therefore, HQT reviewed four variances which skirted Mont Hereford, while avoiding the Réserve naturelle Neil-et-Louise-Tillotson.

In selecting the preferred route, HQT stated that it considered the total length of the route, the total length of the route outside the exiting right-of-way, land use, the potential impact on the landscape, and the location of the view sites and recreational activities. HQT determined that the west variants were preferable from a land use and landscape perspective.

These variants also required the least amount of new right-of-way. Further, HQT noted that based on consultation, the western variants were preferred.

HQT indicated that based on public feedback, including feedback received through meetings with landowners and community representatives, West Variant B was the preferred option because it is located farther from recreational areas. HQT also stated that, compared to West Variant A, West Variant B avoids crossing through the middle of lots and is located along the edge of impacted properties. HQT indicated that while West Variant B will be a higher cost to the company, it will also impact fewer landowners and have less of an impact on land use.

HQT noted that during public meetings in June and September 2015, a number of impacted property owners raised concerns regarding how best to optimize the West Variant B route. HQT stated that it varied the route in several locations in response to these concerns.

### ***Public Comments submitted to the NEB on routing***

In addition to the routing feedback as noted by HQT in its application, in letters to the Board, groups such as the Réseau de milieux naturels protégés, Corridor appalachien, Réal Beloin (landowner) and adjacent landowners, Deux Pays, Une Forêt, Club Chasse et Pêche Hereford Inc., Conseil régional de l'environnement de l'Estrie, Forêt Hereford Inc., Conservation de la nature Canada provided further input. These groups stated that the Permit Project's route is inappropriate and should be revised or that the Permit Project should be constructed underground. It was noted that the portion of the Permit Project continuing into the US will be constructed underground. It was questioned why this approach was not proposed on the Canadian portion of the Permit Project.

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

HQT initially stated that an underground line was not possible for a variety of reasons, including higher costs and access issues during operations and maintenance. However, the BAPE Report (January 2017) requested that HQT reassess the alternative to bury the southern part of the line where much of the public concerns focused. On 22 November 2017, HQT filed a letter with the Board, indicating that as a result of ongoing consultation with Forêt Hereford Inc., and Conservation de la nature Canada, due to the unique character of Forêt Hereford and to ensure a successful integration of the project into the landscape, HQT decided on an underground route for the southern portion of the Permit Project.

### ***Underground Route Selection***

HQT stated that as underground route selection varies from overhead, they used the following criteria to examine the most appropriate underground route in the southern part of the Permit Project.

- To the extent possible, run the line alongside the existing linear infrastructure to lessen impacts on private property.
- Ensure easy access to worksites, since the development and use of temporary roads and subsequent traffic along the underground trench line section will generate major impacts during construction.
- Mitigate the impacts on the population's quality of life, particularly by working with environmental organizations to establish a socially acceptable line route.

HQT stated that it selected the route proposed by Forêt Hereford Inc. and Conservation de la nature Canada following extensive consultation. HQT indicated that the new, underground route for the southern portion of the route will begin where the 450-kV IPL crosses Concession 9. The route will then run through the east side of the Forêt Hereford, running parallel to Chemin Coaticook before continuing south along Lépine, North Country and Owen roads. For the

remaining 2 km to the US border, a short road owned by Forêt Hereford Inc., and very short road on private land will need to be built.

## ***5.2 Land Acquisition***

The Permit Project is located on private land for which HQT must acquire rights. HQT stated that land acquisition for private land in the north part of the route, including crossings is ongoing.

HQT indicated that in the southern portion, the majority of the route will run along public roads (71% or 12.9 km). The route then follows a road privately owned by Forêt Hereford Inc. (26% or 4.79 km). HQT noted that for the remaining 3% of the Permit Project's route, a very short road will also have to be constructed on private land.

HQT confirmed that it has consulted with all affected municipalities regarding Permit Project construction along their respective road allowances. HQT stated that it has also consulted with the two landowners upon whose properties overhead-underground substations will be built. HQT provided additional information to both adjacent landowners, as well as those adjacent to the previously proposed overhead route.

HQT also noted that it will need to purchase nine properties where the Permit Project comes close to existing structures. HQT stated it has been meeting with landowners to discuss easements and remains available to answer questions and meet further with landowners.

### ***Views of the Board***

The Board notes HQT's efforts to determine an appropriate route, taking into consideration public input and land use in the area. The Board notes HQT's route selection criteria, which considered stakeholder concerns and minimized potential environmental and social impacts. The Board notes that this consideration included avoiding sensitive environmental areas and following existing infrastructure as much as possible, such that over 80% of the route follows the existing right-of-way. The Board further notes that the Permit Project is located entirely on private land. The Board finds that the route selection and the criteria used to determine the route were acceptable and appropriate given the scope and scale of the Permit Project.

The Board also notes that in accordance with its Electricity Filing Manual, detailed route and land acquisition in respect of the Permit Project is carried out under provincial laws. Therefore, the Board did not consider this information in its assessment of the Permit Project application. The Board acknowledges that these matters will be considered and determined by the Province of Quebec.

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

HQT conducted an environmental and socio-economic assessment for the Permit Project. Alternatives, including different routes, means and construction methods, were assessed. HQT initially submitted that the only feasible interconnection option consisted in building an above

ground power line between Des Cantons substation and the Quebec–New Hampshire border. However, on 22 November 2017, HQT submitted that it reassessed its original proposal and decided to bury a portion of the route underground for just the southern section (defined as the last 18.28 km of the route from 9<sup>e</sup> rang-Coaticook section to the US border). The 79 km long, 320-kV DC power line between Des Cantons substation and the Quebec–New Hampshire border would be approximately 60.7 km above ground and 18.28 km underground. In addition, HQT will reconfigure and dismantle part of the existing 450-kV Nicolet–Des Cantons line.

Features of the Permit Project area include woodlands, watercourses and wetlands. The proposed route would cross the Forêt Hereford: it would avoid the Réserve naturelle privée Neil-et-Louise Tillotson, but would intersect other sections. HQT reassessed its alternatives for the section of line going through the Forêt Hereford and ultimately opted to bury the line in the south part of its route. The new route limits the power line's impacts on the landscape, and HQT reported that the host community indicated that this alternative respects the community and conservation mission and addresses the concerns raised by the various stakeholders. HQT proposed various standard and element specific mitigation measures to eliminate and reduce Permit Project impacts on the environment. HQT has assessed potential impacts to the biophysical environment, human environment and landscape and determined that the Permit Project is not likely to cause any significant adverse effects.

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

As noted in Section 4, following the NEB's requirements regarding a Permit application, on 23 December 2016, HQT published a notification of the Project application in the Canada Gazette Part I, La Tribune and The Record, as well as sent a direct notification to other utility providers. The notification had a comment period associated with it, where the public could file comments with the NEB by 23 January 2017. The NEB received 11 letters of comment regarding the application. HQT responded to the comments on 7 February 2017.

Below are summaries of issues raised following HQT's original project proposal prior to HQT deciding to bury the line in the southern part of the route.

### **Impacts on Land Use**

The Réseau de milieux naturels protégés, Corridor appalachien, Réal Beloin (landowner) and adjacent landowners, Conseil régional de l'environnement de l'Estrie, Forêt Hereford Inc., and the Conservation de la nature Canada, raised concerns about the impacts of the Permit Project mostly on local residents and around the Forêt Hereford area. The concerns included aesthetic changes to the landscape (e.g., removal of wooded areas; impact to viewing areas by visible powerlines), potential impacts to tourism (e.g., eco-tourism, maple syrup production, recreational activities) and the forestry industry. Land value was also raised as a concern.

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

HQT stated it proposed a variety of mitigation to address concerns raised, including reducing the cleared width of the right-of-way in order to reduce deforestation along the right-of-way and using smaller towers.



HQT also indicated that as the southern section of the line will now be buried, the impacts to visual aesthetics and tourism in the Forêt Hereford area(s) of concern will be lessened. The previously planned above ground towers will be replaced by two overhead-underground junction substations. HQT indicated that the substations will be smaller and more inconspicuous than the previously planned above ground towers. These substations will be located within forested areas, and for the majority will be hidden by the forest vegetation and local landscape.

HQT also stated it will time construction to limit its impact on recreational activities and will notify groups potentially affected by construction (e.g., landowners, hunters, fishers). Signage will be used during construction and a webpage with contact information will remain available.

HQT committed to ongoing consultation with stakeholders to understand and address their concerns.

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

The Réseau de milieux naturels protégés, Deux Pays, Une Forêt, Club Chasse et Pêche Hereford Inc., Nature Québec, Forêt Hereford Inc., and Conservation de la nature Canada noted concerns about the Project's potential impacts on biodiversity, habitat and wildlife caused by fragmentation of the landscape.

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

HQT stated that it proposed a variety of avoidance and mitigation measures to address concerns raised, including reducing width and need for new corridor, reducing deforestation along the right-of-way and using smaller towers. In addition, HQT stated that the majority of the buried pipe will be built within existing road rights-of-way and it will not increase habitat fragmentation. In addition, activities will occur outside of restricted activity periods.

### **Impact on Conservation Goals**

The Réseau de milieux naturels protégés, Corridor appalachien, Deux Pays, Une Forêt, Conseil régional de l'environnement de l'Estrie, Forêt Hereford Inc., and the Conservation de la nature Canada had stated concerns about the potential impacts of the Permit Project on conservation goals, including setting a precedent for development, and the diminishment of conservation organizations' authority and easement rights.

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

HQT stated that it assessed alternatives and has consulted with affected groups about the Permit Project. HQT noted it is in discussions with Forêt Hereford Inc. to discuss compensation for easement rights and to offset any deforestation caused by the Permit Project. HQT also stated the Permit Project will avoid the Réserve naturelle privée Neil-et-Louise Tillotson and that it will bury the southern portion of the line that goes through Forêt Hereford.

### **Negative Impact on Climate Change**

The Syndicat des Producteurs forestiers du Sud du Québec et Fédération de l'UPA Estrie, Réseau de milieux naturels protégés, and Deux Pays, Une Forêt raised concerns about the potential negative impacts of the Permit Project on climate change caused by the loss of forest cover.

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

HQT stated that it proposed a route that would minimize loss of forest cover by paralleling existing lines and it is proposing forest-related specific mitigation measures.

### **Positive Impact on Climate Change**

The Association de l'industrie électrique du Québec, and the Syndicat des Producteurs forestiers du Sud du Québec et Fédération de l'UPA Estrie noted the potential positive impacts on climate change. This would be caused by the Permit Project increasing the use of hydroelectricity instead of hydrocarbons.

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

HQT did not provide a specific response.

### **Impact on Harvestable Trees**

The Syndicat des Producteurs forestiers du Sud du Québec et Fédération de l'UPA Estrie raised concern about compensation for the loss of harvestable trees.

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

HQT noted that through exchanges with the provincial government about Hydro-Québec projects, it was determined that if a transportation line crosses a municipality with 30% or more wooded area, no offset is required. HQT stated that for this Project, this provincial policy applies.

### **Impacts on Traditional Land and Resource Use**

Le Bureau du Ndakinna du Grand Conseil de la Nation Waban-Aki (GCNWA) identified the larger Estrie region as a key area used for traditional land use practices, particularly hunting. The GCNWA noted that as part of the Traditional Land Use Study conducted for the Permit Project, none of the respondents indicated that they practiced traditional land use activities within the immediate vicinity of the project (500 m). However, GNCWA noted that the Permit Project may impact the larger wildlife population, and hunting practices in the Permit Project area.

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

HQT indicated that it engaged with the GCNWA in the summer of 2016 to enable GCNWA to conduct a Traditional Land Use study, which was submitted confidentially to HQT in November

2016. HQT noted that the majority of the land within the Permit Project area is privately held, and that any hunting activities in such areas are subject to prior consent of the landowner. As such, HQT noted that the requirement to consult on these matters is minimal. However, HQT noted that a number of mitigation measures will be implemented to address these concerns during the construction phase. Specifically, a communication protocol will be established to coordinate construction and hunting activities, and reduce potential interference.

### **Impacts on Heritage Resources**

GCNWA raised concerns regarding potential Permit Project impacts on archeological resources, as well as requesting that GCNWA be involved with any inventory or excavations relating to heritage resources.

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

HQT noted that the Permit Project (both above ground and buried) crosses 19 zones with prehistoric archeological potential, and 26 zones of recent archeological potential, totalling 43 hectares. Permit Project activities including excavation and underground work, clearing and placement of equipment could irreversibly damage heritage resources.

HQT identified both general and specific mitigation measures to address heritage resource concerns. The specific mitigation measures include conducting an inventory of areas with archeological potential prior to the start of work, and informing the Ministère de la Culture et des Communications du Québec of the results. This inventory will include sampling, surface investigations and trial excavations to assess the sites. HQT also indicated that if any remains or sites are unearthed, the site will be marked and protected. If an archeological site cannot be avoided, HQT indicated that a dig would be conducted to gather relevant information.

As a result of ongoing Permit Project discussions HQT and GCNWA have agreed in principle that GCNWA would be engaged and involved in any excavation of heritage resources, should they be discovered and excavation required. HQT has noted that specific details are still in discussion. However, HQT is confident that a mutually beneficial agreement can be made. HQT indicated that GCNWA submitted a proposal for archeological services on 27 November 2017, which met HQT's needs. If these services need to be utilized, HQT has confirmed that it will provide HQT with details and specify the nature and scope of the work required.

The BAPE Report (January 2017) requested that HQT reassess the alternative to bury the southern part of the line where much of the public concerns were focused. Following HQT's review and submission that they would bury the southern part of the line (November 2017), interested Parties were also invited to comment on the update at which time no further concerns were raised. In addition, on 8 December 2017, Forêt Hereford Inc., and the Conservation de la nature Canada filed letters of support for the modified buried route proposed by HQT.

Overall, HQT stated that concerns raised from the public were addressed through mitigation measures and considered through the BAPE process. The BAPE's report (January 2017) was reviewed by MDDELCC and the Conseil des ministres du Québec when making its decision to

issue a provincial authorization. The Government of Quebec approved the project and issued a certificate for the Project on 20 December 2017.

### ***Views of the Board***

In assessing the environmental effects of the Project, the NEB considered all the standard environmental elements identified in its Electricity Filing Manual including potential impacts to Forêt Hereford.

HQT applied for a certificate with the Province of Quebec where interested and affected parties were able to express their concerns under the provincial process (considered by the BAPE and MDDELCC as well as by the Conseil des ministres du Québec when it made its decision to issue a certificate). The Board notes the responsibility of the Government of Quebec to oversee the Permit Project as part of the province's issuance of the certificate under provincial jurisdiction. The Province of Quebec imposed conditions on its approval of the Permit Project to protect the environment. These conditions included mitigation and/or compensation measures regarding the Forêt Hereford, wetlands, watercourses as well as certain wildlife and vegetation.

The Board is satisfied that HQT has identified and addressed environmental and socio-economic effects associated with the Permit Project, including those raised through the public comment process within the ambit of an NEB permit application and scope of the applied for Permit Project. As the Board is responsible for issuing a federal permit for the Permit Project, the Board also imposes conditions to enable the Board to verify that HQT fully implements its commitments for the protection of the environment. As such, the Board imposes **Condition 10** requiring HQT to file an updated Environmental Protection Plan prior to commencing construction. The Board also imposes **Condition 17** requiring HQT to file post construction monitoring reports to verify that any possible environmental issues that may arise are identified and mitigated accordingly. In addition, the Board imposes **Condition 13** which requires HQT to confirm that it has obtained all of the required archaeological and heritage resources clearances and authorizations from the province.

Given the nature and scope of the Permit Project as applied for, mitigation measures proposed by HQT, and the implementation of the Government of Quebec and Board's mitigative conditions, the Board anticipates that the carrying out of the Permit Project is not likely to cause significant environmental and socio-economic effects.

## **7.0 Aboriginal Matters**

### ***7.1 Hydro-Québec TransÉnergie's Consultation with Aboriginal Groups for the Project***

In its Application, HQT stated that the Permit Project's study area is not within any territory that is subject of any general or specific Aboriginal land claims. HQT noted that the closest Aboriginal groups to the Permit Project, the Odanak First Nation and Wôlinak First Nation, are located over 80 km from the study area.

HQT explained that in 2001, the band councils of both communities reached an administrative agreement with the Government of Quebec regarding exercising hunting and trapping activities for food, ritual and social purposes. The agreement, which covered the Estrie region, was amended in 2009. Under the agreement, the community councils and the GCNWA have adopted a code of practice regarding these activities. HQT explained that the agreement and code of practice specify the areas where these communities can hunt, fish and trap, and the terms and conditions for doing so. HQT further clarified that these agreements with the Government of Quebec are not an acknowledgement of ancestral rights.

HQT noted that the Permit Project study area is located in zone 6 of the area covered by this agreement and is almost entirely on private land. HQT also stated that Aboriginal community members must reach an agreement with landowners in order to practice traditional activities on private lands.

HQT indicated that as the Permit Project falls within zone 6 of this agreement, HQT consulted with the Bureau du Ndakinna Office of the GCNWA (Ndakinna Office). The Ndakinna Office oversees territorial consultations on behalf of Odanak First Nation and Wôlinak First Nation. During the public consultations on the Permit Project, HQT noted that it met with the Ndakinna Office on 9 February 2016, 25 May 2016, 2 March 2017, and 23 October 2017.

HQT stated that the Ndakinna Office indicated provisionally that the Abenakis use the study area or its immediate vicinity for hunting and trapping. HQT noted that based on the information available to them, these activities occur several hundred metres or kilometres away from the Permit Project.

HQT stated that the Ndakinna Office indicated that the information that the Ndakinna Office itself held regarding traditional territory activities was incomplete. HQT indicated that it provided support to the Ndakinna Office to carry out a traditional land use (TLU) study in the study area and that the completed study remains confidential, at the request of the Ndakinna Office.

HQT noted that based on the Ndakinna Office's submission to the BAPE, no hunting within 500 m of the Permit Project's route has occurred in the past five years. Some areas along the Permit Project were identified as suitable moose habitat, but traditional hunting activities currently do not occur in those locations because they are on private land.

HQT stated that it has discussed mitigation measures with the Ndakinna Office and committed to informing Aboriginal land users of the Permit Project's progress and will remain available to respond to questions or concerns. HQT also noted that the Odanak First Nation and Wôlinak First Nation were consulted by the Direction des évaluations environnementales en milieu terrestre of Quebec's MDDELCC during the provincial environmental impact assessment and review procedure.

## **7.2 Board's Process and Participation of Aboriginal Groups**

Aboriginal groups that are concerned with potential Project-related impacts on their interest, including rights, had opportunities to present their views directly to the Board. While the Board

required the applicant to implement a consultation program and undertake an assessment of the Permit Project's potential effects, including environmental and socio-economic effects, the Board also took steps to facilitate the direct participation of these groups in its proceedings.

The Board was provided with and considered information about concerns related to the Permit Project, and the measures that would be required to address those concerns, as brought forward through consultation undertaken by HQT and through the letters of comment filed directly with the Board by potentially affected Aboriginal groups.

As discussed in Sections 1 and 4, HQT published notification of the application, including notification of the required comment period. The comment period ended 23 January 2017. The NEB received 11 letters of comment during the comment period, none of which were from Aboriginal groups.

The Board, through its own assessment of publically known or asserted Aboriginal traditional territory information, identifies Aboriginal communities which could be potentially affected by the Permit Project. The Board identified the following eight Aboriginal groups as having known or asserted traditional territory in the project area and may be impacted by the Permit Project:

- Algonquin Anishinabeg Nation
- Mohawks of Akwesasne
- Mohawks of Kahnawake
- Mohawks of Kanesatake
- Native Alliance of Quebec
- Odanak First Nation
- Wôlinak First Nation
- Quebec Métis Nation

HQT noted in the Application that it had consulted with the GCNWA, which represents the interests of the communities of Odanak First Nation and Wôlinak First Nation. The Application did not reference consultation or engagement with any additional Aboriginal groups.

On 10 July 2017, the Board asked HQT to confirm whether the Aboriginal groups the Board identified as having known or asserted traditional territory in the Permit Project area were provided with notice of the Permit Application and how HQT has addressed or will address any concerns raised by those groups. HQT responded that the identified groups were not provided with notice as the Permit Project area encompasses no territory covered by any comprehensive or specific Aboriginal land claim. HQT also filed a letter from the Government of Quebec, stating that no specific land claims exist in the Permit Project area. The letter from the Government of Quebec, provided by HQT further stated that in the absence of recognized specific land rights, the Government of Quebec does not believe that HQT has an obligation to consult with the remaining groups.

On 2 October 2017, the Board sent letters directly to the eight Aboriginal groups noted above, as well as the GCNWA. The letter provided a summary of HQT's Application and set out a

comment period until 27 October 2017, requesting that any Aboriginal groups that wished to submit comments and concerns about the Permit Project do so directly to the Board.

On 26 October 2017, the Board received a letter of comment from GCNWA. In its letter, GCNWA outlined its engagement with HQT to date, indicating that the first technical meeting took place in January 2016, and that engagement continued during meetings in March and October 2017.

GCNWA stated that it had completed a TLU study, which was submitted confidentially to HQT in November 2016. GCNWA stated that this TLU study resulted in further discussion and negotiations with HQT. GCNWA stated that while these discussions resulted in mutual agreement on certain aspects of its concerns with the Permit Project, at the time of its letter, GCNWA noted that it still had outstanding issues relating to HQT's consultation efforts, its traditional land and resource use, and the Permit Project's potential impacts on archaeological sites, all of which are further detailed below.

### ***7.3 Issues and Concerns raised by GCNWA***

#### **7.3.1 Hydro-Québec TransÉnergie's Consultation**

GCNWA raised concerns about HQT's statements concerning the legitimacy of GCNWA's claim to traditional territory in the Project area. GCNWA stated that during a meeting on 23 October 2017, a representative of HQT questioned GCNWA's presence in the study area, and indicated that HQT had no obligation towards them. GCNWA noted that these comments raised concerns for GCNWA as to whether or not the company would follow through on its commitments.

#### ***HQT response***

HQT noted that while it appreciates the importance of the land to GCNWA, HQT is not the responsible authority regarding land and ancestral rights. HQT stated that it has been working in a cooperative manner with GCNWA and it wishes to continue to do so. HQT outlined the specific parameters of the agreement between GCNWA and the Government of Quebec regarding hunting and trapping. HQT stated that the Permit Project area is not subject to any comprehensive or specific land claims filed by any Aboriginal groups. HQT stated that due to these factors, it believes GCNWA was properly consulted and accommodated. HQT further stated that it is willing to continue discussions with GCNWA to address any outstanding concerns. Finally, HQT stated that the many exchanges between HQT and GCNWA have always taken place in a spirit of openness and cooperation and that HQT wishes to continue meeting with GCNWA in the same spirit of trust.

#### **7.3.2 Heritage Resources**

GCNWA indicated that it had outstanding concerns regarding heritage resources. Specifically, GCNWA raised concerns that archeological discoveries of cultural significance may occur during Project activities. GCNWA noted the importance of its involvement in any archeological

discoveries, in order to preserve and maintain items of cultural and historical significance. GCNWA noted that its participation in any inventory of archeological potential of the region would also allow GCNWA to positively benefit from Permit Project activities.

#### ***HQT response***

HQT indicated that it is continuing discussions with GCNWA and that the two parties are working to come to a mutually agreeable plan. HQT has agreed that should a site of archeological interest be discovered by the pre-qualified archeology firm, HQT can mandate GCNWA to carry out the excavation, should any such digs be required. HQT indicated that GCNWA submitted a proposal for archeological services on 27 November 2017, which was satisfactory for HQT's needs. If these services need to be utilized, HQT has confirmed that it will provide HQT with details and specify the nature and scope of the work required. More information regarding HQT's specific mitigation measures regarding the discovery of heritage resources are found in the ESA section of this decision.

### **7.3.3 Community Development and Positive Impacts**

GCNWA stated that in the interest of maximizing the positive impacts of the Project, it advised HQT of the Nation's interest in its Integrated Enhancement Program (IEP). GCNWA notes that this program would provide the Nation with financial support for initiatives such as land reclamation, environmental protection or community and area development. GCNWA noted that Wôlinak First Nation has previously benefited from this program. However, GCNWA was informed that it does not currently qualify, as the Permit Project is not in direct proximity to reserve lands of either community.

#### ***HQT response***

HQT confirmed that GCNWA does not meet the specific criteria of the IEP program for the Permit Project. HQT further noted that in an effort to create positive benefits for GCNWA, HQT recommended that GCNWA submit proposals for projects that are likely to receive financial support from HQT. One such proposal is currently being reviewed by HQT. HQT committed to continuing to work cooperatively with GCNWA and addressing the concerns of the community.

### **7.3.4 Traditional Land and Resource Use**

GCNWA raised concerns about Project-related impacts on hunting and trapping in its traditional territory, both near and outside of the Permit Project area. GCNWA noted that none of the respondents to its TLU study practice traditional activities within 500 metres of the Permit Project area. That said, GCNWA raised concerns relating to the impacts on wildlife populations and community based hunting. GCNWA noted that community based hunting is highly important on both a cultural and community level.

GCNWA also raised concerns regarding direct and cumulative impacts on wildlife. Specifically, it noted concerns about wildlife habitat and habitat fragmentation. GCNWA did note that HQT had provided explanations for its mitigation measures, which seemed to address the problem



sufficiently. GCNWA still stated the importance of protecting wildlife, resources and access to territory for future generations.

### ***HQT response***

HQT provided a response directly to GCNWA, outlining specific details of its planned mitigation measures, some of which will be designed specifically to address the concerns of GCNWA. Among other measures, HQT indicated that a communication protocol would be established to harmonize construction with hunting activities. More information regarding HQT's specific mitigation measures regarding traditional land and resource use is found in the ESA section of this decision.

### **7.3.5 Access to Traditional Territory**

GCNWA noted that as important portions of its traditional territory is privately owned, it is important that the Permit Project not reduce members' ability to access Crown land. GCNWA noted that although these impacts are likely negligible, improving access to land for GCNWA members would be an interesting way to maximize the Permit Project's positive benefits to GCNWA. GCNWA further noted that HQT stated that it is not in a position to put such measures into place, as the Permit Project will take place on privately owned lands.

### ***HQT response***

HQT noted that any activities occurring on the right-of-way (such as hunting) would be subject to the prior consent of the private landowner. HQT reiterated its cooperative efforts carried out with GCNWA that fall within a wider, public participation process in which HQT seeks to address the concerns of the host community insofar as possible.

### **7.4 *Issues and Concerns of the Innus de Pessamit***

In addition to the concerns discussed in Section 1 of this Decision, the Innus de Pessamit also argued that the Permit Project violates their Aboriginal and Treaty rights. Their 2 August 2017 letter pointed to the Supreme Court of Canada decision *Clyde River v. Petroleum Geo-Services Inc.*, and indicated that the Innus de Pessamit were asserting their rights and wishing to be consulted in accordance of s.35(1), Constitution Act, 1982. The Innus further requested that they be consulted in a manner that meets the honour of the Crown.

### ***HQT response***

In response to the concerns raised regarding lack of consultation with the Innus de Pessamit, HQT indicated that it did not consult with the Innus de Pessamit, as their traditional territory is located several hundred kilometres away from the Permit Project study area, and the Innus de Pessamit do not use or frequent the Permit Project area. HQT indicated that there also no link between the Permit Project and any generating stations within the Innus de Pessamit territory. HQT also reiterated that the concerns raised by the Innus de Pessamit were subject to the BAPE

process, and were evaluated within that process. In its reply, HQT did not comment on section 35 of the *Constitution Act, 1982*.

## **7.5 Views of the Board**

The Board has considered all of the relevant information before it, including HQT's activities to engage Aboriginal groups, and the letters filed by GCNWA on 26 October 2018, and from the Innus de Pessamit on 2 August 2017, 8 September 2017, and 14 December 2017, respectively, along with HQT's reply to Board IRs and letters submitted on 1 September 2017, 9 November 2017, and 20 December 2017.

The Board's process is designed to obtain as much relevant evidence as possible on Aboriginal concerns about a project, potential project impacts on Aboriginal interests and possible mitigation measures. In addition to providing technical information addressing impacts of the project on, among other things, wildlife, vegetation, and heritage resources, HQT was required to make all reasonable efforts to consult with potentially affected Aboriginal groups and to provide information about those consultations to the Board.

This included evidence on the nature of the interests potentially affected, the concerns that were raised and the manner and degree to which those concerns have been addressed. The Board evaluates the sufficiency of the applicant's consultation process along with any other evidence of consultation it has on its record. HQT was expected to report on all Aboriginal concerns that were expressed to it, even if it was unable or unwilling to address those concerns. Therefore, even if Aboriginal peoples chose not to contact the Board directly, any concerns could be brought to the attention of the Board through HQT's evidence and their filings.

This consultation was guided by the Board's *Filing Manual* Requirements. These Requirements reflect the fact that an applicant is often in the best position to respond to the concerns of Aboriginal groups about a project before an application is filed and while a project is still in the early stages of development. The Board expects an applicant to design and implement its consultation 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 Aboriginal interests including rights (which would, in part, depend on the nature of that interest), the Board has greater expectations in terms of the applicant's consultation with potentially impacted Aboriginal groups. In contrast, where there is a remote possibility of an impact on Aboriginal interests, or the impacts are minor in nature, the applicant's consultation will generally not be expected to be as extensive.

In assessing the consultation undertaken by HQT with Aboriginal groups, the Board evaluated the design and implementation of HQT's consultation activities. The Board considered the company's activities to engage Aboriginal groups and to learn about their concerns and interests, as well as the concerns and views expressed by Aboriginal groups. It also considered how Aboriginal groups responded to opportunities for

consultation and how HQT sought to address the concerns of potentially affected groups. The Board considered how this input influenced the Permit Project's proposed design and operation.

The Board is of the view that HQT's design of Project-specific consultation activities was adequate given the scope and scale of the Permit Project. The Board notes HQT's commitment to ongoing consultation with Aboriginal groups, in particular its ongoing dialogue with the GCNWA.

The Board notes GCNWA's concerns regarding the impact of the Permit Project on archaeological resources in the area, as well concerns raised regarding traditional activities, customs and practices, such as hunting and trapping. The Board also notes the concerns raised regarding community development as well as access to traditional territory.

In assessing potential impacts on Aboriginal interests, the Board considered all of the evidence provided. The Board assessed the information provided in HQT's Application on potential impacts on Aboriginal interests, including rights, the concerns raised by Aboriginal groups, and the measures that HQT has proposed to minimize or eliminate the Permit Project's potential impacts on the interests of Aboriginal groups.

The Board notes that the Permit Project is located primarily on privately owned land with limited access by Aboriginal groups. The Board has assessed the mitigation measures proposed by HQT related to hunting and trapping, as well as heritage and cultural resources. The Board is of the view that the potential adverse effects of the Permit Project on the current use of lands and resources for traditional purposes by Aboriginal groups are not likely to be significant.

The Board also notes the submissions of the Innus de Pessamit regarding the adequacy of consultation to meet the requirements of section 35 of the *Constitution Act, 1982*. The Board is mindful that two recent Supreme Court of Canada decisions, *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, have acknowledged the Crown's ability to rely on the Board's regulatory assessment process to fulfill its duty to consult when the Board is the final decision-maker. The Board is the decision-maker in relation to this Permit Project.

The Board has considered the information submitted regarding the nature of potentially affected Aboriginal interests in the Permit Project area, including information on constitutionally protected Aboriginal and Treaty rights. The Board has also considered the anticipated effects of the Permit Project on those interests, and the concerns expressed by GCNWA in particular.

In light of the nature of the interests and the anticipated effects, the Board has evaluated the consultation undertaken with respect to this Permit Project, including the consultation performed by HQT and the consultation undertaken through the Board's project

assessment process. The Board has also considered the mitigation measures proposed to address the various concerns and potential effects. The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on the Permit Project. The Board is also of the view that any potential Project-related impacts on the interests, including rights, of affected Aboriginal groups are not likely to be significant and can be effectively addressed.

As a result of the above, considering all of the findings in this Decision, the Board is of the view that the requirements of section 35 of the *Constitution Act, 1982*, have been met, such that the issuance of a permit under section 58.11 of the NEB Act is consistent with the honour of the Crown.

## 8.0 Disposition

For the reasons described above, the Board is of the view that further inquiry into HQT's application is not warranted. Accordingly, the Board will not recommend to the Minister that the Governor in Council designate HQT's application for a certifying procedure. Therefore, the Board has issued the attached electricity permit EP-303 and MO-020-2018.

The foregoing constitutes, pursuant to Part III.1 of the NEB Act, the Board's Reasons for Decision in the present applications of HQT.



R. R. George  
Presiding Member



L. Mercier  
Member



J. Gauthier  
Member

Calgary, Alberta  
March 2018