



Canada Energy
Regulator

Régie de l'énergie
du Canada

Suite 210
517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8

517, Dixième Avenue S.-O.
bureau 210
Calgary (Alberta)
T2R 0A8

File OF-Fac-IPL-Q016-2022-01 01
20 July 2023

LETTER DECISION

Nicolas Tremblay
Director – Transmission Lines
Hydro-Québec – Infrastructure and Energy
Systems Group
855 Saint-Catherine Rd East, 18th Floor
Montréal, QC H2L 4P5
Email tremblay.nicolas@hydroquebec.com

Julie Couture
Advisor – Government Approvals
Hydro-Québec – Infrastructure and Energy
Systems Group
855 Saint-Catherine Rd East, 18th Floor
Montréal, QC H2L 4P5
Email couture.julie@hydroquebec.com

Mathieu Drolet
Advisor – Government Approvals
Hydro-Québec – Infrastructure and Energy
Systems Group
855 Saint-Catherine Rd East, 18th Floor
Montréal, QC H2L 4P5
Email drolet.mathieu@hydroquebec.com

Dear Nicolas Tremblay, Julie Couture and Mathieu Drolet:

Hydro-Québec
Application for the Hertel-New York Interconnection Power Line Project under
section 248 of the *Canadian Energy Regulator Act*

Before: M. Chartier, Presiding Commissioner; T. Grimoldby, Commissioner;
S. Luciuk, Commissioner

1.0 Introduction and Disposition

On 8 July 2022, Hydro-Québec (**HQ**) filed an Application for a permit for the Hertel-New York Interconnection Power Line Project (**Project**) under section 248 of the *Canadian Energy Regulator Act* (**CER Act**) for the above noted Application (**Application**).

The Commission has determined no further process is required. Accordingly, the Commission does not recommend to the Minister that the Governor in Council designate HQ's Application for a certificate process. Specifically, in accordance with section 257 of the CER Act, the Commission is satisfied that the construction and operation of the Project will 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, including matters relevant to section 56 of the CER Act.

.../2

The Commission issues the attached electricity Permit EP-306 (**Permit**).

2.0 Project Overview and the CER Process

2.1 Project Overview

On 8 July 2022, HQ filed an application in relation to the Hertel-New York Interconnection Power Line with the Canada Energy Regulator (**CER**), to build and operate an underground, direct current, 400 kilovolt (**kV**) direct current (**DC**) transmission line approximately 58 kilometres (**km**) long, from the Hertel substation in La Prairie, Quebec to an interconnection point at the Canada-United States (**US**) border (New York State) under the Richelieu River. The proposed international power line (**IPL**) will enable HQ to provide New England with up to 1250 megawatts (**MW**) of power at 400 kV DC.

2.2 Legislative Framework

The CER's electricity mandate relating to international and interprovincial electricity transport is set out in Part 4 of the CER Act. Section 248 of the CER Act requires that the Commission must, subject to section 8 of the *Impact Assessment Act*.¹ 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.

The Commission assesses a permit application before determining whether to recommend designation to the Governor in Council for assessment as a certificate or to issue the permit. In making its decision, the Commission considers the criteria in subsection 257(2) of the CER Act which it finds pertinent and tries to avoid duplication with the province. In addition, pursuant to section 56 of the CER Act, the Commission considers any adverse effects the decision may have on the rights of Indigenous Peoples.

In the present case, the Project, is located in the Province of Quebec. Most of the HQ system is regulated provincially since the CER has jurisdiction only over the HQ transmission lines which cross international boundaries. As part of the provincial assessment process, the Bureau d'audiences publiques sur l'environnement (**BAPE**) held a hearing process. Its Investigation and Public Hearing Report (**BAPE report**) was considered as part of the environmental analysis by the Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs (**MELCCFP**) and by the Quebec Council of Ministers. The provincial decree authorizing the Project was adopted by the Quebec Council of Ministers on 28 June 2023. The construction and operation of the IPL will primarily be regulated by the Régie de l'énergie du Québec (**Régie**).

Finally, pursuant to subsection 278(1) of the CER Act, the Commission can impose conditions to a permit related to matters prescribed by the *National Energy Board Electricity Regulations* that the Commission considers to be necessary or in the public interest.

2.3 CER Process

The Permit EP-306 process included several written components, including the filing of written evidence and the testing of that evidence through written questions (known as Information Requests (**IRs**)). The Commission issued three rounds of IRs to HQ to which HQ responded. Other steps included issuing potential conditions for comment and a public

¹ 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.

comment period during which potentially affected or interested parties could submit written letters of comment regarding the Application. HQ was given the opportunity to reply to all comments received. The Commission issued two Procedural Directives explaining all process steps, which outlined the expectations and requirements for participants associated with each step.² The Commission is satisfied that the process allowed for sufficient opportunity to participate.

3.0 Comments related to Upstream Generation Facilities

Having considered all relevant submissions, the specific circumstances of the Project and the below criteria, the Commission finds that there is not a sufficient link between the Project and the generating facilities for the Commission to consider the generating facilities as part of its evaluation of the Project. Upstream facilities are not properly within the scope of the proceedings before the Commission regarding this Application.

Abitibiwinni, Lac Simon and Kitigan Zibi Anishnabeg First Nations

The Abitibiwinni, Lac Simon and Kitigan Zibi Anishnabeg First Nations (**Anishnabeg First Nations**) filed a letter detailing their concerns regarding the Project's impact on generation activities upstream and the non-respect of their Rights established under section 35 of the Constitution Act 1982 by the Provincial Crown.

The Anishnabeg First Nations stated that HQ's 2020-2029 Supply Plan indicates that new generating capacity is not required to meet Québec's domestic demand until 2026 or 2027 and therefore additional power generation will be needed in the future. The Anishnabeg First Nations further stated that HQ's strategy to meet external demand implies that a significant portion of the electricity to New York State must come from the Anishnabeg Nitakinan.

The Anishnabeg First Nations submitted that generation, modifications to generation and increased generation directly impact their traditional activities, including traditional fisheries, and therefore the Project's authorization without considering these impacts will have adverse effects on the Anishnabeg First Nations' constitutional rights.

The Anishnabeg First Nations noted that there has been no consultation with them by the Provincial Crown or HQ on the upgrade work on the hydroelectric work and requested that the Provincial Crown consult them regarding matters such as impacts on vegetation, wildlife and fish species, climate change, and their rights from the increase in electricity production and increase in usage of certain components of the power generation.

The Anishnabeg First Nations requested the Federal Crown to intervene in consideration of the Project's adverse effects on their rights as recognized and affirmed by section 35 of Constitution Act 1982, specifically considering the precautionary approach to ecosystems, sustainable fisheries, scientific information and Indigenous knowledge.

HQ's Response

In its reply, HQ confirmed that its application to the Commission concerns the construction of the Project and not the existing hydroelectric power generation facilities located upstream of the Project and that these facilities are independent from the proposed IPL.

² All filings associated with the permit Application are available on the CER website: 2022-07-08 – Application for the Hertel-New York Interconnection Power Line Project <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/4236464>

HQ stated that the issuance of a permit authorizing the construction and operation of the proposed IPL will have no adverse effect on the Anishnabeg First Nations and, therefore, that the Crown's duty to consult and accommodate these First Nations is not triggered in this case.

HQ added that this Application is not the appropriate forum to address the historical grievances of the Anishnabeg First Nations with respect to HQ's hydroelectric power generation facilities or their past refurbishments.

Commission Analysis and Findings

The Commission finds that there is not a sufficient link established between the Application and the generating facilities. Upstream facilities fall outside the scope of the proceedings before the Commission regarding this Application and therefore the Commission is not the competent authority to make a decision on this matter.

The Commission has considered the concerns and arguments raised by the Anishnabeg First Nations related to the generation of electricity and the potential impacts on their constitutional rights. The arguments of the Anishnabeg First Nations relate to the impacts of existing upstream generating facilities.

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.

The Impact Assessment Agency has developed guidelines for determining when incidental activities should be included in the scope of an assessment. These guidelines are not authoritative in the present case; 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 consider:

- (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.

The Commission has determined that:

- (i) there are no generating facilities dependent on the Project or planned as a consequence of the Project;
- (ii) and (iii) these criteria are irrelevant because HQ has not proposed any incidental activity for the Project;
- (iv) the generating facilities in question are used to provide electricity to the entire HQ system and all its customers, not solely for the benefit of HQ or the Project; and
- (v) the generating facilities are provincially assessed and regulated.

The Commission finds that upstream facilities are not incidental to the Project and therefore the Commission has no authority to take them into account in the assessment of the Application.

Moreover, the Commission finds that consultation in regard to this Project with the Anishnabeg First Nations was sufficient. The Anishnabeg First Nations argued that more consultation was required because the Project could potentially impact their constitutionally protected rights. However, the impacts described related only to the existing upstream generation facilities. The Anishnabeg First Nations did not identify any concerns that were directly linked to the Project, which is the construction and operation of the transmission line. The duty to consult relates to the current decision under consideration, not previous decisions.³ The Commission finds that Anishnabeg First Nations did not raise any novel impacts that were directly related to the Project.

Public Engagement Matters

The Commission considers that HQ's engagement program was appropriate for the scope and scale of the Permit application.

HQ's Public Engagement for the Project

Since September 2020 and in the fall of 2021, HQ presented the Project to official community representatives, local and regional organizations, affected landowners, residents of the Project study area and regional media. These groups and individuals were able to submit their comments and concerns about the Project and obtain answers to their questions. HQ considered these concerns during Project development to integrate the Project with local realities as smoothly as possible.

Overall, public reception of the Project at open-house activities was favorable. Concerns raised, among others, related to traffic, road obstructions, work schedules, and maintaining access to private property during construction and the side of the road where the route will pass. A number of people were reassured by the fact that the line is underground and located mainly in public rights-of-way.

HQ has committed to maintaining harmonious relationships with local communities throughout the Project lifecycle and continuing to keep interested persons informed during the next stages of the Project. HQ has indicated that its community relations team will remain available to respond to questions and concerns once the Project is in operation.

Commission Analysis and Findings

The Commission is of the view that HQ's program and public engagement efforts were appropriate for the scope and scale of the Project subject to the Application. The Commission notes that HQ has responded to the public concerns received through the provincial comment period and it has proposed mitigation measures to address those concerns.

³ 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.

5.0 Matters related to Indigenous Peoples

The Commission is of the opinion that there was sufficient consultation with potentially impacted Indigenous Peoples and that accommodation measures, where appropriate, were adequate. The Commission finds that effects of the Project on traditional land and resource use (TLRU) and heritage resources to be of low significance. The Commission also finds that that effects of the Project on the rights of Indigenous Peoples are of low severity and can be effectively mitigated.

Hydro-Quebec's Engagement with Indigenous Peoples for the Project

HQ stated that on 5 January 2022, the CER sent HQ a preliminary traditional territory analysis, in which it identified the following Indigenous communities and organizations as being potentially affected by the Project:

- Abenaki Council of Odanak
- Grand Conseil de la Nation Waban-Aki
- Native Alliance of Quebec
- Conseil des Abénakis de Wôlinak
- Mohawk Council of Kahnawà:ke
- Mohawk Council of Kanesatake
- Mohawk Council of Akwesasne

HQ stated that during the Project planning phase, it carried out information and consultation activities with the three communities of the Mohawk Nation and the Grand Conseil de la Nation Waban-Aki (**GCNWA**), who represents the two communities of the Abenaki Nations, the Abenaki Councils of Odanak and Wôlinak, in order to obtain their comments and concerns about the Project. HQ noted that the GCNWA and its member communities assert that the Abenaki Nations hold the Indigenous and treaty rights to the traditional territory known as Ndakinna, of which the western boundary is the Richelieu River which lies within the Project study area and is the site of the crossover point at the Canada–U.S. border.

HQ did not communicate with the Native Alliance of Quebec during the development of the Project. HQ submitted that there are no land claims by the Native Alliance of Quebec or any of its local organizations in the Project study area.

In the spring of 2021, HQ and the Mohawk Council of Kahnawà:ke (**MCK**) entered into a memorandum of understanding to negotiate a final agreement under which the MCK would become a joint owner with HQ of the Quebec portion of the Project. HQ stated that this partnership would provide the community of Kahnawà:ke with various economic benefits related to the Project. In its Project application, HQ indicated that the final agreement was under negotiation between HQ and the MCK and the agreement would subsequently have to be approved by the Quebec government.

CER's Process and Participation of Indigenous Peoples

Indigenous Peoples potentially impacted by the Project also had opportunities to provide their concerns and raise potential impacts to Indigenous and Treaty rights recognized by section 35 of the *Constitution Act, 1982* (**Section 35 rights**) directly with 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 the rights of Indigenous Peoples, the Commission also took steps to

receive direct comments from Indigenous Peoples. Following its own traditional territory analysis, the CER also identified Indigenous communities as having known or asserted traditional territories in the Project area. The Commission considered comment letters from First Nations containing their concerns related to the Project, as well as HQ's responses.

On 12 October 2022, the CER sent a letter to Indigenous communities and organizations potentially affected by the Project to seek their comments. The CER letter notified the potentially affected Indigenous communities and organizations of the Project and the CER's engagement requirements for proponents and provided them with a Project summary. Each letter encouraged communities and organizations with concerns about the Project to contact HQ first to have those concerns considered and to participate in the BAPE review proceedings. On 16 March 2023, another letter was sent to the above-mentioned Indigenous communities and organizations providing them with a summary of the Application and informing them about the comment period.

The Commission received comments from the MCK.

Mohawk Council of Kahnawà:ke

In their letter submitted to the CER, MCK expressed their support of the Project. The MCK stated that they have entered into a "ground-breaking strategic partnership" with HQ for the joint ownership of the Hertel Line. The MCK noted that the Mohawks of Kahnawà:ke are the only established Indigenous community that would be directly impacted by the Project in Canada. The MCK provided that the Mohawk's territory includes lands in present day Quebec and New York State, overlapping with the vast majority of the Project footprint. This includes the Hertel substation, the entire 58 km of the Hertel Line, and the majority of the Champlain Hudson Power Express (**CHPE**) project footprint in the State of New York, including Lake Champlain. MCK stated that since time immemorial, these lands and bodies of water formed part of their Mohawk historical territory and traditional hunting and fishing grounds.

The MCK submitted that the future joint ownership of the Hertel Line will provide the MCK with a financial stake in the infrastructure located on their lands. The MCK noted that Kahnawà:ke will be represented at the Board level in the corporate entity that will own the Hertel Line and that HQ has committed to provide contract opportunities to Kahnawà:ke workers during the construction phase.

The MCK confirmed that it has already completed a land use study, which includes information on the exercise of traditional land use on the affected lands and they have had and continue to provide input in the environmental assessments. MCK stated that they will have input in archaeological surveys, studies and excavations, and an opportunity to have an archaeologist or an archaeological technician onsite to ensure any archeological interests are flagged and considered during the construction phase.

The MCK further confirmed that the MCK consultation committee has been directly involved in the environmental and archaeological review process every step of the way. The MCK are of the view that given that the Hertel Line will be buried and use existing rights of way, the impact to the environment will be minimized. Th MCK said that they are confident that impacts identified by the MCK consultation committee will be adequately addressed and accommodated by HQ. The MCK confirmed that their consultation committee continues and will continue to have ongoing dialogues with HQ's personnel as it relates to the Project and the mitigation of the environmental impacts.

HQ's Response

HQ indicated that project impacts on communities and land users are discussed and, where necessary, mitigation measures are put in place to limit these impacts.

Rights and Interests of Indigenous Peoples

There are three Mohawk communities in Quebec, located in the southwestern part of the province. HQ noted that the closest community to the Project is Kahnawà:ke, located about 15 km from the Hertel substation. The other communities are Kanesatake and Akwesasne, located approximately 55 km and 100 km from the Hertel substation, respectively. In addition, the Mohawks of Kahnawà:ke and Kanesatake share a territory for traditional purposes called *Tioweró:ton* (known as "Doncaster"), located in the Laurentians.

The Abenaki Nation has two communities in Quebec: Odanak, with a registered population of 2,873, and Wôlinak, with a registered population of 618. HQ explained that the GCNWA is a tribal council comprising the Abenaki communities of Odanak and Wôlinak and that it and member communities hold Indigenous and treaty rights to a traditional territory called Ndakinna, of which the western boundary is the Richelieu River. The Government of Canada and the Abenaki Nation signed the *Abenaki Consultation and Accommodation Protocol*, which covers the territory bordering on the Richelieu River to the west and thus also bordering the Project study area.

Regarding TLRU, HQ noted that a land-use study, intended to document the MCK's use of the land for food, social or ceremonial purposes, was conducted from spring to fall 2021 by the community, in collaboration with HQ, as deemed appropriate by the MCK. The study also sought to determine the MCK's concerns and expectations regarding the Project and to propose measures to mitigate any potential impact of the Project on the activities of community members who frequent the territory. HQ confirmed that the feedback gathered in this way has contributed to the assessment of impacts, the definition of mitigation measures and the re-drafting of several sections of the Project's impact statement.

Regarding heritage resources, HQ confirmed that the archaeological potential studies have been transmitted to the MCK and have also been communicated to the GCNWA. The Commission did not receive any concerns with respect to TLRU or heritage resources.

Commission Analysis and Findings

The Commission finds that there has been adequate consultation and accommodation and finds that effects of the Project on the rights of Indigenous Peoples are of low severity and can be effectively mitigated. The Commission also finds that the issuance of a permit under section 248 of the CER Act is consistent with section 35 of the *Constitution Act, 1982* and the honour of the Crown.

The Commission has evaluated the consultation undertaken with respect of this Project and finds it to be adequate. Its evaluation is based on the size and scope of the Project. It takes into consideration HQ's completed and ongoing engagement activities and the consultation undertaken through the CER's project assessment process, noting also the provincial process. The Commission finds that HQ's design and implementation of its Project-specific engagement activities was adequate given the scope and scale of the Project. The Commission notes HQ's commitment to ongoing engagement with Indigenous Peoples, in particular its ongoing dialogue with the MCK and le GCNWA.

The Commission provided opportunity for potentially impacted Indigenous Peoples to participate in the Commission's process. As a result of these opportunities, the Commission received sufficient information to allow it to assess the effects of the Project on the rights of Indigenous Peoples. The Commission also finds that accommodation is adequate. To arrive at this conclusion, the Commission considered potential effects on the rights and interests of Indigenous Peoples by assessing the information provided in HQ's Application regarding potential effects, the concerns raised by Indigenous Peoples, and the measures that HQ has proposed to minimize or eliminate the Project's potential effects on the rights and interests of Indigenous Peoples.

The Commission finds that effects of the Project on the rights of Indigenous Peoples are of low severity and can be effectively addressed. This finding is based on the nature and location of the Project (e.g., located on predominantly agricultural land, a route that uses existing linear infrastructure as much as possible, an underground and underwater line that limits farmland encroachment, deforestation and impacts on the public) and the proposed mitigation measures to address the Project effects.

The Commission finds that the potential effects of the Project on TLRU and heritage resources to be of low significance, given the nature and location of the Project, the completed archaeological studies, the completed TLRU study, HQ's heritage resources contingency plans (which is included in **Condition 9 (Environmental Protection Plan (EPP))**), and HQ's mitigation measures.

The Commission notes the discussions between HQ and MCK and further steps taken with respect to the future joint ownership of the proposed transmission line that will provide economic opportunities for the community over the long term.

6.0 Land Matters

The Commission is of the view that the route selection and the criteria used to determine the route are acceptable and appropriate given the scope and scale of the Project.

6.1 Overview of Hydro-Quebec's Route Selection Process

In its application, HQ stated that different factors must be considered in siting an underground line compared to an overhead line. The impacts of a Project of this type occur mainly during the construction phase, i.e., when the line is being installed in the ground using various techniques (e.g., excavation, drilling, etc.). Once the construction work is completed, no structure is visible.

HQ confirmed that, in light of the inventories and studies carried out, from both a technical and an environmental standpoint, and considering all siting criteria, two variants were examined for reaching Autoroute 15 from the Hertel substation.

HQ highlighted that its approach, as well as the route and its two variants, were presented to a wide audience including land managers, representatives of various community organizations, Indigenous communities, potentially affected landowners and residents of the Project study area. HQ concluded that pairing the line with roadways contributes positively to the Project by limiting environmental fragmentation of the land.

In its application, HQ specified that a total of eight municipalities are affected by the Project. HQ sought consultation on two route variants in the northern part of the Project study area in order to gather the public's concerns and determine the route with the lowest impact.

The selected route consists of a 56.1-km underground section and a 1.6-km underwater section. This route has the following advantages: fewer residences and businesses, less traffic, availability of traffic detour roads during construction, shorter length, fewer technical issues and more seasonal land use. The route crosses farmland and HQ property for just over 3 km. The final section of the route follows Ruisseau Fairbanks to the Richelieu River, where the interconnection with the U.S. grid is located.

HQ confirmed that the route uses mostly public rights-of-way (95%) and minimizes encroachment on farmland and woodland. Due to most of the route following roadways, the only locations where the proposed route touches private property is at its north and south ends, in La Prairie and Lacolle. These areas which are mostly on farmland total only 2 km in length.

HQ noted that the main criteria that guided the development of the proposed route are as follows:

- pair the proposed line with existing linear infrastructure to minimize fragmentation of the territory;
- avoid existing or planned protected areas, conservation reserves and protected wildlife habitats;
- avoid sensitive elements and environments (waterways, wetlands, woodlands);
- avoid impacts on residents and their properties;
- run the line along property limits wherever possible;
- choose positions for permanent structures that limit impacts on wetlands and farmland; limit impacts on the landscape;
- adapt the work method and construction period so as to minimize the impacts during the construction and operation of the IPL, if certain sensitive elements are unavoidable; and
- consider the questions and concerns of the public, land managers and organizations concerned by the Project.

Comments submitted to the CER on Routing

In their letter of comment, Fermes Veser s.e.n.c., owners of market garden land, expressed concern about the Project's impact on farmland. Fermes Veser s.e.n.c. claimed that although the route presented by HQ is mostly within public infrastructure, the area preceding the interconnection point is privately owned at the intersection of Rang Edgerton and Route 223. Fermes Veser s.e.n.c. stated that they are concerned about the Project's impact on the sustainability of market garden crops not only in the target area, but also in the area as a whole should the drainage, pumping and embankment system fail.

HQ's Response

In its response, HQ noted that the letter submitted by Fermes Veser s.e.n.c. raises concerns that are under the jurisdiction of provincial authorities. HQ described the criteria that justified the choice of route and specified the mitigation measures that will be implemented to limit the

environmental impact of the work. HQ explained that a number of mitigation measures specific to farmland will be implemented before and during construction, and farmland yields will be monitored following construction to ensure that they are comparable to initial yields. HQ reported that during the operation phase, farming will be possible along all but a negligible area of the route located on farmland. HQ added that it favours mutual agreements with affected landowners, which are generally achieved with private landowners through financial compensation in the majority of its recent cases.

Commission Analysis and Findings

The Commission is of the opinion that Hydro-Québec provided all the necessary information regarding the choice of the route. Pursuant to Section 5 of the *National Energy Board Electricity Regulations*,⁴ a permit application must provide information on the choice of route. The Commission considered HQ's efforts to determine an appropriate route, taking into consideration public input and land use in the Project area. The Commission is of the view that the route selection and the criteria used to determine the route are acceptable and appropriate given the scope and scale of the Project. The Commission notes that HQ's route selection criteria including its selected variant which for majority of its route follows existing infrastructure such as public roads and minimizes potential environmental and social impacts. The Commission further notes that the detailed route and land acquisition in respect of the Project are carried out under provincial laws. The Commission acknowledges that these matters will be considered and determined by the Province of Quebec.

7.0 Facilities, Safety and Emergency Management Matters

The Commission finds that HQ has provided the information required pursuant to the *National Energy Board Electricity Regulations*. The Commission's findings and imposed conditions are detailed in the paragraphs below.

7.1 Facility Design and Safety

The Commission is of the view that the proposed Project makes use of sound engineering practices with respect to the structural design, layout, equipment selection, specifications, and protection system.

HQ provided the engineering details in the application and IR responses, specifically:

- Project technical description for the +/- 400 kV DC line and associated equipment;
- Technical specifications for underground conductor (+/- 400 kV DC, 2500 mm² copper core, 125.6 mm diameter, 21.3 mm XLPE insulation, 1638 A, 1310 MW) and associated datasheet. Technical specification for the underwater conductor (+/- 400 kV DC, 2500 mm² copper core, 138.1 mm diameter, 21.3 mm XLPE isolation, 1638 A, 1310 MW) and associated datasheet;
- Physical protection description of the underwater conductor (+/- 1.2 m cover and additional steel-wire armor);
- Electrical protection system description comprised of two independent and simultaneous protection systems including current, voltage, frequency and overload protection;

⁴ DORS/97-130

- Lists of applicable standards; and
- Design drawings for the concrete encased duct trench, grounding, and single line diagram.

Commission Analysis and Findings

In order for the Commission to ascertain that the Project will be completed following all engineering conditions committed to, the Commission imposes **Condition 4 and Condition 7 (Reliability and Safety), as well as Condition 8 (Quality Assurance and Control Program)** to require HQ to design, construct and operate the Project in accordance with the specifications set forth in its Application. The Commission also imposes **Condition 22 (As-Built Drawings)** to require HQ to provide drawings of the finished Project for record.

7.2 Champlain Sea Clay Geohazards

As explained below, the Commission has concerns regarding the Champlain Sea Clay Geohazards. The Commission therefore imposes **Condition 15**.

HQ specified in the application that the crossover point at the Canada-US border is located in the Richelieu River, and that the transition from underground to the underwater sections of the line (i.e., the landing site) is located in an environmentally sensitive area. Therefore, HQ is planning to perform Horizontal Directional Drilling (**HDD**) to install the cable in order to avoid the environmentally sensitive area.

HQ indicated that the Project planned construction method involves installation by HDD from the landing site located near the Richelieu River and submitted a feasibility study for the proposed installation. The HDD feasibility study report (**HDD Feasibility Report**) indicated that the drilling site will be located at the limit of a fairly recent alluvial terrace of the river and that the subsurface stratigraphy consists of clayey marine deposits of the deep water the Champlain Sea deposited during the most recent deglaciation (**Champlain Sea Clay**). HQ also described the clay soil as having stiff consistency and varying thickness between 4 m and 7 m within the overburden beneath the terrestrial portion of the alignment. The feasibility study report did not mention any risk rating or mitigation related to the presence of the Champlain Sea Clay.

In view of this information, the Commission proposed **Condition 15**. However, HQ argued for the deletion of this condition during the comment period on potential conditions because according to HQ there are no geological risks related to the Champlain Sea Clay.

Following HQ's proposal to remove **Condition 15**, the Commission issued an IR about the extent, properties and sensitivity of the Champlain Sea Clay that was encountered in the Project area. HQ responded that the geotechnical study carried out showed that the clay deposits encountered are of thin thickness and that it is of stiff consistency in its upper part and that based on the properties of the clay soils encountered it is not considered sensitive. The Commission requested that HQ submits the geotechnical study reports that were completed in support of the HDD. The submitted reports showed that boreholes drilled within the terrestrial portion of the HDD encountered clay deposits of high moisture content and low consistency indicative of the Champlain Sea Clay deposit. Mitigation measures were not provided in the original application nor the geotechnical study.

Commission Analysis and Findings

The Commission finds that the original information filed, the response to the IRs and the geotechnical study filed in response to the IR indicate the presence of very soft to soft clay

with water content approaching the liquid limit. The Commission is of the view that these properties combined with the Project area regional geology are indicative of the presence of the Champlain Sea Clay deposit. The Commission finds that this clay deposit is of high sensitivity to disturbance and vibration and may pose a challenge to surface stability when disturbed. The Commission considers that the presence of the sensitive Champlain Sea Clay combined with a lack of mitigation measures requires that the Commission impose **Condition 15 (Geological Hazards)**. This condition requires HQ to file a Geohazards Assessment Report that considers the geohazards associated with the proposed HDD installation along the Samuel-De Champlain Biodiversity Reserve and a portion of the Richelieu River.

7.3 HDD Execution and Fluid Management Plans

The Commission is of the opinion that the HDD execution and fluid management plans are essential to ensure the safety of construction activities, the safety of people and the protection of the environment.

The HDD feasibility study report stated that the HDD entry point will be located on agricultural land and the exit point will be located within in the Richelieu River. The HDD Feasibility Report mentions risks associated with the HDD operation. In IR No. 2.3, The Commission requested that HQ submit the HDD Execution Plan and the Fluid Management Plan for the proposed HDD. HQ responded that these documents are not available yet and that they will be submitted to the Commission once completed.

Commission Analysis and Findings

HQ has committed to filing the HDD Execution Plan and the Engineering Drilling Fluid Management Plan when such plans become available. A properly prepared Drilling Fluid Management Plan and an execution plan ensure that Project construction is carried out taking into consideration site-specific conditions.

The Commission is of the view that it is not a commonly performed practice to have the HDD exit point within the river channel as this may pose challenges during construction. The Commission is of the view that properly prepared and planned Project construction is very important for the safety of construction, safety of people, and protection of the environment. As these plans were not yet available at the time of this decision, and given the unique and sensitive nature of the installation, the Commission imposes **Condition 14 (HDD Samuel-De Champlain Biodiversity Reserve to Richelieu River)**. This condition requires HQ to file the Execution Plan and the Drilling Fluid Management Plan which include the mitigation measures for the risks mentioned in the HDD Feasibility Report before the start of HDD activities.

7.4 Reliability – Impact on the Bulk Power System

The Commission is of opinion that the Project will not have a negative impact on the reliability of the bulk power system as long as some modifications are performed prior to operation. HQ detailed the Project reliability impact on the bulk power system, that is on the power systems of neighboring provinces, Quebec, and New York Independent System Operator (**NYISO**).

HQ stated that the proposed Project does not have reliability impact on the neighboring provinces power systems. With respect to Quebec, the provincial regulator, Régie, approved the construction of the Project in a decision dated 17 November 2022. In its decision, Régie concluded that the Project would improve the electricity transport reliability and quality.

However, Régie noted that modifications to existing HQ system components were required to maintain reliability. Specifically, HQ would need to add a shunt capacitor at the Montérégie substation as well as increase the thermal capacity of lines 7005 and 7035 between Lévis and Nicolet Substations. The NYISO, in its Reliability Need Assessment report, stated that the reliability of the bulk power system is heavily reliant on timely completion of the CHPE, the line to which the Project would interconnect on the US side.

Commission Analysis and Findings

The Commission imposes **Condition 20 (Required Power System Modifications)** to require HQ to perform the modifications necessary to maintain reliability of the bulk power system as mentioned in the Régie decision. The Commission also imposes **Condition 19 (Reliability, Safety and Security)** to require HQ to comply with the General Order for Electric Reliability.

7.5 Reliability – Operational Limits

The Commission is of view that the Project operation limits should be stated on the permit.

HQ stated that, at the Canada-US border, the +/- 400 kV CC transmission line will have a transfer capability limit of 1,283 MW in export mode and 1,220 MW in import mode under both winter and summer conditions. HQ also stated that the Project will be operated in compliance with the Régie, Northeast Power Coordinating Council (**NPCC**) and North American Electric Reliability Corporation (**NERC**) reliability standards and as well as the General Order for Electricity Reliability Standards.

Commission Analysis and Findings

The Commission is of view that the Project operation limits should be stated on the permit to require HQ to operate the IPL within the limits for which it was designed. Stating the operation limits in the permit will require HQ to apply to the Commission to modify those limits should HQ decide to operate the line in deviation from the line intended operation limits. As a result, the Commission imposes **Condition 17 (Transfer Capability Limit)** and **Condition 18 (Nominal Design Voltage)** to require HQ to operate the IPL within its design operational limit.

8.0 Economic Feasibility and Need for the Project

The Commission finds that the Project is responding to market needs and that there is currently adequate supply of electricity available to be delivered.

In making its determination on the economic feasibility of a proposed project and related facilities, the Commission 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 Commission 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.

8.1 Need for facilities

The Commission finds that HQ demonstrated that the Project will be used.

In June 2019, HQ (as the producer) submitted a request to HQ (as the transmission provider) to increase the export capacity of the HQ system to the New York State market.

HQ submitted that this transmission service request was at the origin of the Hertel-New York IPL Project.

HQ (as the transmission provider) is required to make additions to its transmission system when the available capacity is limited to meet a customer service request related to energy exchanges with neighboring systems. HQ submitted that the existing interconnection points with New York State are insufficient to meet the additional firm point-to-point transmission service request of 1250 MW, as none of the existing HQ IPLs provide a connection to the CHPE project in New York State.

HQ stated that the purpose of the Project is to supply firm point-to-point transmission service using a 400-kV DC IPL from the Hertel substation in Quebec to Astoria substation, located in the Queens neighborhood of New York City, New York State via the CHPE project.

Markets

In October 2020, the New York Public Service Commission (**NYPSC**) adopted amendments to the New York State Energy Standard to create a new program called Tier 4 a Renewable Energy Certificate category which included the production from large hydroelectric power plants.

Following these amendments, HQ entered into an agreement with the New York State Energy Research Development Authority (**NYSERDA**) in November 2021 to supply an annual quantity of 10,402,500 megawatt-hour (**MWh**)⁵ for the first 25 years of service which was approved by NYPSC in April 2022. HQ submitted that this agreement demonstrates the existence of an adequate market for the energy to be transmitted via the proposed IPL.

Supply

HQ submitted that it will supply NYSERDA over the entire term of the Agreement from its hydroelectric production fleet, which consists of 62 hydroelectric generating stations, totaling nearly 37,000 MW. In addition, HQ submitted having 178.9 terawatt-hour (**TWh**) of storage capacity in 29 large reservoirs, and operates more than 684 dams, including 92 control structures.

The BAPE report highlighted some comments raised by third-party intervenors during the provincial proceeding on the environment. These issues pertain to the challenge for the province of Quebec to achieve its 2050 carbon neutrality due to the export of electricity, and the fact that projections show that there will be a shortage of upstream production capacity by 2026-2027 when the IPL is expected to be commissioned. HQ stated that the IPL could reduce close to 3.9 million tons of greenhouse gas (**GHG**) per year and speed up the decarbonization of the North-east of the continent. HQ also stated that there could be a capacity gain of close to eight to ten TWh in the next ten years through energy efficiency, additional wind projects, and upgrades to existing power plants and turbines. HQ indicated that energy security is not compromised in Quebec by achieving its electricity export objective.

⁵ This quantity corresponds to the capacity at the CHPE Project delivery point in New York City, assuming a 95% load factor (1,250 MW x 8,760 hours x 0.95).

Commission Analysis and Findings

The Commission finds that HQ has demonstrated that the Project is responding to market needs and that the Project will increase the export capacity of electricity produced in Quebec. The Commission is also satisfied that HQ has demonstrated that there is currently adequate supply of electricity available to be transported.

The Commission finds that the evidence provided by HQ regarding the market conditions is sufficient to demonstrate the 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 13 (Approvals and Permits for the Connection)** requiring HQ to file its approvals for connecting facilities into the bulk power system fourteen days prior to commencing construction.

The Commission notes that there may be an expected need for new upstream production capacity by 2026-2027 as identified in the BAPE report. However, the proposed Project is not dependent on any new or existing upstream facilities. The Commission also notes that HQ is considering adopting energy efficiency measures to mitigate any risk of system supply shortage as well as increasing wind production capacity and upgrades to existing production infrastructure. As a result, the Commission is satisfied that sufficient energy supply will be available throughout the lifecycle of the proposed IPL to enable the IPL to be used at a reasonable level over its economic life.

8.2 Ability to Finance Construction and Operation

The Commission finds that HQ has demonstrated that it has the ability to finance construction and operation of the Project.

HQ stated that the estimated Project costs are \$1.15 billion, i.e., \$500 million for the construction of the transmission line and \$650 million for work at Hertel substation. HQ specified that as the Transmission Provider, it is responsible for financing and constructing the Quebec portion of the proposed IPL. It will recover its investments in accordance with the terms and conditions set out in its Service Agreement for Firm Long-Term Point-to-Point Transmission Service.

HQ claimed that it has sufficient financial resources to cover costs that may be generated by unforeseen, Project-related events.

HQ added that the service life of the proposed IPL is estimated to be approximately 45 years from its commissioning. HQ stated that it will ensure the long-term operability of the asset by carrying out the required maintenance during this period, and hence, does not plan to cease operation during that time.

HQ stated that should the IPL need to be retired, HQ would give prior notice to the CER and then abandon the line in accordance with applicable legislations. HQ stated it would finance this work in the same way it finances its transmission projects.

HQ added that it has entered into a memorandum of understanding with the MCK for the joint-ownership of the IPL, which is intended to provide these Indigenous communities with various economic benefits related to the Project. This preliminary agreement indicated that the IPL will be transferred to a new entity jointly owned by the MCK and HQ (the "**MCK-HQ Entity**") upon commissioning of the Project scheduled for 2026. HQ submitted that the final agreement between both parties, which is yet to be approved by all stakeholders, provides that the IPL will be operated and maintained by HQ as the Transmission Provider.

This agreement also indicated that HQ as the Transmission Provider will enter into agreements to purchase the entire transmission capacity of the proposed Project from the MCK-HQ Entity.

Commission Analysis and Findings

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

Regarding the potential agreement where the proposed Hertel IPL ownership will be transferred to the MCK-HQ Entity once the IPL is operational, the Commission imposes **Conditions 2 and 3 (Change of ownership)** requiring HQ to notify the CER of any change in ownership or operator.

9.0 Environment and Socio-Economic Matters

The Commission finds that the Project is not likely to cause significant environmental effects. given the nature and scope of the Project covered by the submission, the implementation of the mitigation and avoidance measures proposed by HQ, the fact that 95% of the chosen route is on a public right-of-way (**RoW**) along existing roads and highways, the recommendations made in the BAPE Report and the conditions imposed by the Commission.

9.1 Overview of HQ's environmental and socio-economic assessment

HQ conducted an environmental and socio-economic assessment (**ESA**) for the Project which assessed Project interactions, potential effects, proposed mitigation measures and anticipated residual effects, including cumulative effects.

HQ explored alternative routes for the landing site, located in the southeastern section of the route in order to avoid an environmentally sensitive area, the Samuel De Champlain Biodiversity Reserve. The selected route uses mostly public RoW (95%) along existing roads and highways and minimizes encroachment on farmlands and woodlands. Two short segments of the route, near the Hertel substation and the Richelieu River are on private land.

The MELCCFP conducted a public consultation process through the BAPE to safeguard the protection of the environment including agricultural lands, wetlands, and watercourses. The BAPE report was released on 16 March 2023.

Commission Analysis and Findings

The Commission has considered matters set out in the CER Act and the *National Energy Board Electricity Regulations* in its assessment. HQ proposed standard and ecosystem component-specific mitigation measures to eliminate or reduce environmental impacts. After assessing the potential effects on the natural environment, the Commission determined that the Project is not expected to cause significant adverse effects.

In assessing the environmental effects of the Project, the Commission considered all of the standard environmental elements identified in the Electricity Filing Manual. The Commission is satisfied that HQ has identified and addressed the environmental effects associated with the Project, including those raised through the public comment process. The exception to the Commission's conclusion relates to fish and fish habitat, for which assessment is ongoing under the DFO-CER MOU.

9.2 Impacts on Fish and Fish Habitat

The Commission concludes that the Project will have an impact on fish and fish habitat in the Richelieu River and watercourse crossings.

HQ indicated that the Project has potential impacts to fish and fish habitat for 34 watercourses including the Richelieu River. In-water work will take place in the fall to early winter and possibly during the spring period when fish spawning activities occur. Temporary disruption and loss of fish habitat is expected from Project activities, as well as some permanent changes to fish habitat within the Richelieu River.

HQ proposed several mitigation measures to minimize encroachment and temporary disturbance to fish and fish habitat. HQ anticipates that the residual impact on fish and fish habitat will be moderate.

9.2.1 Work in the Richelieu River

The Project extends into the Richelieu River from the final underground junction chamber. The underground and submarine cables will be connected in this chamber. The Project extends further into the Richelieu River for about 1.6 km to reach the junction point on the riverbed at the Canada-U.S. border. HDD was the selected method for in-water works in the Richelieu River to minimize the impacts on the natural environment.

HQ stated that in-water drilling works in the Richelieu River will take place over a period of six to nine months (March – October) when there is no ice cover, depending on the selected work sequence. Approximately 1.6 km of cables will be buried in the riverbed and covered by protective structures, depending on the type of substrate present. At the junction point with the U.S. cable (i.e., the exit point of the drilling borehole), a cofferdam measuring 50 m by 50 m, turbidity curtains, or a combination of both will be installed to temporarily restrict access to fish and fish habitat.

The potential habitat area to be affected by the cofferdam is approximately **2,500 m²**. HQ stated that cable burial works will occur in the central zone of the Richelieu River where grass beds are absent or sparse with a direct footprint of approximately **4,300 m²**. Riprap or concrete mattresses will be used in areas of fine substrate and is estimated to impact an area of **1,080 m²** due to the width of the concrete mattresses to be used.

HQ states that the American Eel (*Anguilla rostrata*) listed as threatened by the *Committee on the Status of Endangered Wildlife in Canada (COSEWIC)* is present in the Project area and uses the Richelieu River for fish passage and migration. HQ also confirms mussel mortality and the temporary or permanent loss of mussel habitat (where concrete mattresses are used).

Commission Analysis and Findings

The Commission accepts HQ's submission that the potential habitat area to be affected by the installation of the cofferdam and or turbidity curtains is estimated at **2,500 m²** while the habitat area to be affected by cable burial works is estimated at **4,300 m²**. Where riprap or concrete mattresses are used in areas with fine substrate, the direct footprint is estimated to be **1,080 m²**. The Commission has determined that the residual effects on fish and fish habitat in the Richelieu River are likely to be significant due to the extensive estimated footprint of the work area within the Richelieu River, and therefore issued a letter regarding the potential for an Authorization letter ([C23765](#)) to DFO on 23 March 2023.

The Commission recognizes that HQ provided standard mitigation measures including emergency management plans with a commitment to comply with applicable regulatory requirements. The Commission also notes that HQ expects any residual effects on fish and fish habitat to be moderate. The Commission imposes **Condition 16 (Authorizations under Paragraph 34.4(2)(b) and 35(2)(b) of the Fisheries Act)** requesting HQ to file with the CER a copy of the authorization(s) in line with paragraph 34.4(2)(b) and paragraph 35(2)(b) of the *Fisheries Act* or a Letter of Advice where an authorization is not required.

9.2.2 Watercourse crossings

The Project crosses 33 other waterbodies, of which 11 will be crossed by HDD, 15 will be crossed within roadside structures, and the remaining 7 by open trench method. HQ affirms that the death of fish is unlikely with the implementation of proposed mitigation measures.

HQ states that open trench drilling and in-water activities in certain fish-bearing watercourses will occur during construction (i.e., CE4-2, CE33, CE36, CE12, CE14-1, CE14-4, CE17-3, CE17-5, CE17-6, CE49, CE57-1, CE57-2, CE56, CE61 and the Richelieu River) due to temporary encroachment. HQ states that the total temporary encroachment footprint is estimated at 8,132 m² in the littoral zone and 44,484 m² on the riparian environment. Permanent encroachment in the riparian environment during operations is estimated at 81 m².

The CER issued a letter to DFO on 23 March 2023 regarding the potential for an Authorization required under the *Fisheries Act* ([C23765](#)) to notify DFO of the proposed in-water works within the Richelieu River. In this letter, the CER requested that DFO confirms if it will be implementing the MOU. In addition, the CER requested that DFO confirms if one or more Authorizations are required under paragraphs 34.4(2)(b) or 35(2)(b) of the *Fisheries Act* for some of the work proposed by HQ. The Commission also issued a letter to HQ on 4 May 2023 ([C24381](#)) to inform HQ of the revised DFO-CER MOU. According to DFO's letter received on 11 July 2023, DFO will examine the impacts on fish and fish habitat for crossing of the Richelieu River, but for all other watercourse crossings, the CER will assess impacts when the information is provided by HQ in accordance with the MOU.

Commission Analysis and Findings

The Commission's decision as it pertains to fish and fish habitat remains inconclusive because HQ has not provided adequate information to the Commission to allow for a full assessment under the DFO-CER MOU. While the Commission understands that HQ stated it would submit its request for assessment directly to DFO at the end of April 2023 with respect to the issues that do not comply with DFO standards and codes of practice, the required information has not been made accessible for assessment under the DFO-CER MOU. The Commission therefore imposes **Condition 10 (Finalized Watercourse Crossing Inventory)** requiring HQ to file the exact location and encroachment for each watercourse crossing as per the DFO-CER MOU. This information is required to determine the impact to fish and fish habitat and identify watercourse crossings that may require *Fisheries Act* Authorization(s) prior to construction under paragraph 35(2)(b) of the *Fisheries Act*.

9.3 Impacts on Wetlands

The Commission expects Project monitoring to encompass all environmental elements, including the effectiveness of wetland restoration. The Project is expected to cause a temporary loss of approximately 6.6 ha of wetlands, and a permanent loss of approximately 0.6 ha. The Commission provided an opportunity for HQ, Indigenous Peoples, and the public to comment on potential conditions for the Project on 16 March 2023.

These conditions included the requirements for a Project-specific EPP (**Condition 9**) for construction and the submission of Post-Construction Monitoring Reports (**PCMRs**) (**Condition 23**).

Mohawk Council of Kahnawà-ke

The MCK requested an update to the EPP Condition to specify measures for assessing and compensating residual adverse impacts to wetlands including the addition of compensation measures in requirement (i) and the description of measurable objectives for compensation in requirement (iii). The MCK also requested the inclusion of Global Positioning System (GPS) locations for environmentally sensitive areas identified through surveys in accordance with the requirements set out in the CER Electricity Filing Manual.

The MCK requested an update to the PCMR Condition to include descriptions of monitoring programs for mitigation, restoration, and compensation and, for wetlands. The MCK also requested that a description of how HQ plans on monitoring the effectiveness of the use of the provincial wetland compensation fund for offsetting residual adverse effects within the planned 5-year monitoring schedule be added to the condition. MCK states that the rationale for this request is that there is currently no evidence that the application of the provincial regulation will result in offsetting the residual adverse effects on wetlands within this timeframe and additional description is therefore required.

HQ's Response

HQ addressed MCK's concerns by reiterating its commitment to continued engagement with the MCK, the implementation of proposed mitigation measures and adaptive management practices. HQ did not comment directly on MCK's specific requests on monitoring programs, restoration, and compensation with respect to the permanent loss of wetlands.

Commission Analysis and Findings

The Commission notes that HQ and the MCK are continuing discussions regarding the establishment of quantifiable objectives for residual adverse effects and compensation for wetlands and anticipates that the results of these discussions will be reflected in the filings relating to **Conditions 9 and 23**.

The Commission imposes **Condition 9** which requires HQ to file with the CER the EPP for the Project, which it must implement. Regarding the addition of specific compensation measures to **Condition 9**, the Commission acknowledges the existence of a provincial compensation mechanism for permanently affected wetlands, and that HQ is committed to paying financial compensation, in accordance with the Regulation respecting compensation for damage to wetlands and waterbodies, for the permanent effects on wetlands. The Commission believes that this mechanism is a good way to achieve the objective of no net loss for wetlands, while avoiding duplication of efforts in this regard.

The Commission imposes **Condition 23 (Post Construction Monitoring Report)** so that long-term monitoring is conducted until the affected areas are reclaimed and shows evidence to be on a positive trajectory towards restoration. The Commission partially grants HQ's request for a change in the standard timing of this condition from 31 January to 30 March to accommodate HQ's unique construction timelines for this Project.

9.4 Migratory Birds and Species at Risk

HQ confirmed the presence of 95 migratory birds protected under Article 1 of the *Migratory Birds Convention Act, 1994* in the Project Study Area ([C23449-6](#)). In **condition 9**, related to

the EPP, the Commission requires HQ to file all mitigation measures specific to species at risk, migratory birds, and their habitat prior to construction. The CER did not receive any comments from interested parties with respect to migratory birds or species at risk.

HQ's Response

HQ suggested that the wording "if required" be added to the EPP **condition 9** as no breeding bird survey or nest management plan will be required as specified in its response to IR No. 2.6.

Commission Analysis and Findings

With respect to HQ's request to modify **condition 9** to be limited to federally listed species at risk and migratory birds, the Commission declines this request in order to maintain a broader approach with respect to the assessment of valued ecosystem components. The scope of this Condition remains broad enough for measures to protect, restore and assess all environmental element can be required.

9.5 Accidental Discharge and Potential Contamination

The Commission agrees with HQ that Project in-water works have the potential to alter water quality. The potential risk of sedimentation, contamination from hydraulic fracturing and accidental spillage of petroleum products could be significant should they occur. As such, the Commission imposes **Condition 9 (EPP)** requiring that HQ files a description of its EPP including a Notice of Contamination (**NOC**) with the CER within 7 days in the case of an accidental discharge or where contamination is discovered.

HQ's Response

HQ suggested the removal of this Condition or modifying the wording to include measures to be taken for the management of accidental spills and soil contamination in accordance with the applicable legal framework.

Commission Analysis and Findings

With respect to HQ's request to remove or modify the requirement to file a NOC, the Commission declines this request and maintains a broader approach to the assessment of valued ecosystem components.

9.6 Greenhouse Gases and Climate Change

The assessment of the extent to which the Project, through its impact, adversely affects or contributes to the Government of Canada's ability to meet its environmental obligations or its climate change commitments does not apply to permit applications related to an international power line. The Commission nevertheless accepts HQ's evidence on this subject. HQ states that the estimated emissions related to the operation of the Project are approximately 1 kilotonne ("kt") of carbon dioxide equivalent, which is relatively low given the scale of this Project. The estimated total GHG that will be emitted upstream due to planned Project activities are below the 500 kt threshold established by Environment and Climate Change Canada's Strategic Assessment of Climate Change.

Mohawk Council of Kahnawà-ke

The MCK expressed its "delight to contribute to New York's largest renewable energy and transmission Project in 50 years". The MCK states that the CHPE line will connect with the

New York City power grid in Astoria, which will reduce reliance on much of the energy currently produced by fossil fuel powered plants in the area.

Support from Electricity Canada and WaterPower Canada

The CER received letters from Electricity Canada and WaterPower Canada in support of the Project for economic and environmental reasons. Electricity Canada believes the Project should be approved as the infrastructure would create a direct connection, provide clean energy, and will reduce over 3.9 million tonnes of GHG emissions. WaterPower Canada added that this Project would help reduce fossil fuel fired production as HQ's objectives for the Project aligns with WaterPower Canada's goals for the Canadian hydroelectric industry.

Commission Analysis and Findings

HQ applied for a permit with the Province of Quebec. Interested and affected parties were able to express their concerns under the provincial process (led by the BAPE and MELCC). The Commission recognizes the responsibility of the Government of Quebec to oversee the Project as part of the province's issuance of the permit 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.

The Commission expects HQ to continue to work with MCK to mitigate and fully neutralize residual environmental effects while taking advantage of the provisions of existing frameworks.

10.0 Conclusion

The Commission issues Permit EP-306. The Commission thanks all participants for their helpful submissions and participation in this process. The Commission directs HQ to serve a copy of this letter and the attached Permit EP-306 on all interested parties.

Yours sincerely,

K. McAllister

for
Ramona Sladic
Secretary of the Commission

Attachment