

STRENGTH

PEACE

UNITY

Mohawk Council of Kahnawake



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**STATE OF NEW YORK
Public Service Commission**

RE: CASE 15-E-0302:

BRIEF OF THE MOHAWK COUNCIL OF KAHNAWÀ:KE IN SUPPORT OF CHAMPLAIN HUDSON POWER EXPRESS, INC. (CHPE) WITHIN THE PROCEEDING ON MOTION OF THE COMMISSION TO IMPLEMENT A LARGE-SCALE RENEWABLE PROGRAM AND A CLEAN ENERGY STANDARD.

Introduction

The Mohawk Council of Kahnawà:ke (“MCK”) is writing this brief in support of the Champlain Hudson Power Express (CHPE) project and hereby confirms that it supports the construction of the project as outlined in further detail herein.

The MCK is the duly elected governing body of the Mohawks of Kahnawà:ke having its head offices at 1 Church Road, Mohawk Territory of Kahnawà:ke, Quebec, Canada, J0L 1B0. The Mohawks of Kahnawà:ke are a recognized Indigenous community located on the south shore of Montreal, comprised of approximately 8,000 members. There are 11 Indigenous Nations living on the territory known as Quebec, Canada. Those nations are spread out into 55 different communities of which Kahnawà:ke is one.

The MCK and Hydro-Quebec have entered into a strategic partnership for the joint ownership of the Hertel-New York Interconnection Line (“Hertel Line”). As such, the MCK agrees to fully support the construction of the Hertel Line. The Hertel Line – the name attributed to the CHPE transmission infrastructure on the Canadian side of the border – is the only new infrastructure build out required by Hydro-Quebec to transmit its renewable hydro-electric power to the State of New York. No other infrastructure is required, and the Mohawks of Kahnawà:ke are the only established Indigenous community that will be directly impacted by the build out of the Hertel Line in Canada.

Recently, other Indigenous groups located on the territory known as Quebec have communicated to New York authorities that hydropower installations were permitted and constructed on their traditional territories in the past, without their consent. While these claims must clearly be addressed with the relevant authorities, it is important to point out that the hydropower installations in question were not built as a part of the CHPE project. The only new infrastructure to be built is the Hertel Line. Any other discussions on claims should be dealt with separately from this project.

The placement of the Hertel Line substation is located within our historic territory and Seigneurie of Sault St. Louis (“SSSL”) land grievance lands. Moreover, the rest of the 60-km line on the Canadian side of the

border and the continuation of the line into New York state extends down through our historical Mohawk territory, which is on both sides of the present Canada-U.S. border.

History of Mohawk rights over project footprint

Mohawk territory includes, but is not limited to, lands in present day Quebec and New York State and covers the vast majority of the project footprint. It includes lands from the Hertel substation, the entire 60-km line on the Canadian side of the border, and the majority of the CHPE project footprint in New York State, including Lake Champlain. Since time immemorial, these lands and bodies of water formed part of our Mohawk historical territory and traditional hunting and fishing grounds over which we exerted control. The current Mohawk Territory of Kahnawà:ke is only a very small part of our historical territory and has reserve status pursuant to the Canadian *Indian Act*, R.S.C. 1985, c I-5. The current territory of Kahnawà:ke is approximately one third of what remains from the larger SSSL land base, which extends from what is known today as Chateaugay to La Prairie in the Province of Quebec.

At a time when the British and the French were trying to wrestle control of North America from one another, the French wished to attract the Iroquois to a permanent settlement on the south shore of modern-day Montreal. The SSSL lands were a concession by Louis XIV, King of France, made by letters patent to the Fathers of the Society of Jesus for the sole benefit of the “Iroquois of the Sault” (as the ancestors of the Mohawks of Kahnawà:ke were known at the time). Over time, our unceded lands were illegally sold off to non-Indigenous settlers, thus eroding Kahnawà:ke’s land base. The SSSL lands that were illegally ceded are still considered by us to be Mohawk territory and are subject to a land grievance that has been accepted for negotiation by the Government of Canada. As mentioned in our introduction, the Hertel Line substation is located within an area subject to a longstanding land grievance.

Reconciliation

The Mohawk of Kahnawà:ke have suffered numerous impacts over the years, including the dispossession of our historical territory, SSSL lands, and unilateral imposition of the *Indian Act*. The application of the *Indian Act*, the goal of which was to assimilate Indigenous peoples and cultures, facilitated the expropriation of our lands. Attracted by Kahnawà:ke’s proximity to Montreal, major infrastructure projects were disproportionately placed on Kahnawà:ke’s ever-shrinking land base.

Over the past two centuries, Kahnawà:ke’s landscape has been scarred by a major highway, two major roadways, the St. Lawrence seaway, a major road bridge, a railway bridge, two railway lines, and four hydroelectric transmission lines. Each of these projects has resulted in land takings and in some cases, outright expropriations. These land takings often involved no compensation or one-time lump sum payments in exchange for a perpetual interest in the lands. All in the name of progress.

Up until now, these third-party land takings and development projects were for the sole benefit non-Indigenous peoples and corporations. Canadian law and society in general now recognize that advancing reconciliation with Indigenous peoples is required and must be a top priority.

The Honour of the Crown and achieving reconciliation between Indigenous peoples and the Canadian government are now fundamental principles of Canadian Aboriginal law that are protected by the Constitution. Flowing from this, the Crown has a duty to consult and accommodate Indigenous peoples whenever there is government action that has a potential adverse effect on Aboriginal rights (including Aboriginal title, rights and treaty rights). The duty to consult framework was established as a mechanism for the recognition of Aboriginal rights pending the conclusion of modern treaties and agreements. While this duty is owed by the Crown, proponents including Crown corporations like Hydro-Quebec, will often initiate separate consultation processes to ensure that Indigenous peoples have been adequately consulted and accommodated.

Kahnawà:ke's renewed relationship with Hydro-Quebec

It is in this spirit that Hydro-Quebec initiated the consultation process on the Hertel Line with the MCK in 2014. Given the potential impact to Kahnawà:ke's rights in the land, the parties negotiated an accommodation measure that would make the MCK joint owners of the Hertel Line, as well as other concessions discussed further below. This is a defining moment in Hydro-Quebec's history as this is the first time that it has come to an agreement to share the ownership of its transmission infrastructure with an Indigenous community.

Admittedly, Kahnawà:ke's relationship with Hydro-Quebec has not always been an easy one. Prior to and following the creation of Hydro-Quebec in the 1940s, four transmission lines were constructed on Kahnawà:ke lands between the 1910s and the 1970s. This doesn't begin to include the countless hydroelectricity production infrastructure, transmission lines and utility infrastructure constructed on the SSSL lands for which no compensation was received.

In the past two decades, Hydro-Quebec has made a concerted effort to negotiate fair and reasonable accommodation measures for the ongoing use of Kahnawà:ke lands. By way of example, Hydro-Quebec has removed all but one of its transmission lines in Kahnawà:ke. It is currently returning all unused lands to its original state. Hydro-Quebec has also agreed to pay reasonable compensation for its continued use of Kahnawà:ke lands. And more recently, Hydro-Quebec has invited the MCK to participate in the joint ownership of the Hertel Line located on SSSL lands. These are the building blocks of a renewed relationship demonstrating to Kahnawà:ke that Hydro-Quebec is dedicated to being a good corporate citizen moving forward.

The joint ownership of the Hertel Line will provide the MCK with a financial stake in the infrastructure located on its lands. The MCK will receive revenues from its ownership stake for at least forty (40) years. Aside from the purely monetary benefits of the Hertel Line, Kahnawà:ke will benefit from the following:

- The MCK will be represented at the board level in the corporate entity that will own the Hertel Line proportional to its equity interest in the project.
- Hydro-Quebec will look to provide contract opportunities to Kahnawà:ke workers during the construction phase.
- The MCK has already participated in a land use study, which details how the Mohawks used and continue to use the lands and exploit their traditional rights on the affected lands.
- The MCK will have input in the environmental assessments.
- The MCK will participate in the regulatory approval phases by the relevant Canadian and Quebec regulatory boards.
- The MCK will have input in archaeological surveys, studies and excavations.
- The MCK will have an archaeologist or archaeological technician onsite during the construction phase.

Importantly, Hydro-Quebec has also undertaken to make an important financial contribution towards Kahnawà:ke's new Cultural Center, Museum and Theatre which will be housed in one central building. This facility will host language and culture programs dedicated to promoting and preserving the traditional Mohawk way of life. It will have a dedicated public gallery for exhibits and precious collections and the theatre will provide a space for plays, workshops and community meetings.

Kahnawà:ke's support for clean energy projects

When considering the impact of projects, the Mohawks of Kahnawà:ke base decision-making on respect for all parts of the natural world. In our language Ohén:ton Karihwatéhkwen means "the words that come before all else." It is the opening address at gatherings, schools, ceremonies and the beginning and end of each day, to remind us of the important responsibility we all share to ensure that the cycles of life continue and to remind us that all of Creation is sacred and interconnected. We acknowledge that every part of the natural world has importance, not only for the benefits they provide for human survival, but also for the role they play within the web of life.

The Ohén:ton Karihwatéhkwen is the basis of our approach to environmental assessment because it outlines the roles and responsibilities of all of the components of the natural world, including humans. These components are as follows: The People; The Earth, Our Mother; The Plants, Berries, and the Three Sisters; The Waters; The Fishes; The Trees; The Animals; The Birds; The Winds; The Thunder Beings; Our Grandfathers; The Sun, Elder Brother; The Moon, Our Grandmother; The Stars; The Four Beings; and Our Creator. The purpose of each component, how humans benefit from it/them, and the role assigned by the Creator are recited. In this way, we give thanks and re-orient our minds to show respect and understanding of our relatives -- the non-humans as well as the natural elements. Reciting the "words that come before all else" was our first instruction from the Creator, and as a ceremonial practice it reinforces the relationships and conditions that promote health and a healthy environment. The Ohén:ton Karihwatéhkwen is also an environmental code that is based on Kanien'kehá:ka (Mohawk) traditional laws and practices. Its underlying philosophy provides us with a framework for categorizing and assessing the health of the environment, including the impacts of current actions on future environmental health.

In all environmental decision-making, we consider the principle of the Seven Generations. Any decisions taken today must consider the impact of the selected actions on the next seven generations. By anticipating the consequences of our actions, seven generations into the future, we ensure that our actions reflect our responsibility to maintain the cycles of life.

The approach we take to environmental assessment reflects our jurisdictional responsibilities and our inherent and Aboriginal rights as Indigenous peoples in this territory. In assessing the impacts of projects we are guided by the knowledge that the lands and waters are inseparable from who we are as Kanien'kehá:ka.

The MCK has a dedicated consultation committee composed of environmental experts, archaeological experts, and assisted by lawyers to review projects that will potentially impact Mohawk rights. This committee ensures that the appropriate measures are taken to avoid, mitigate and accommodate negative environmental impacts stemming from development projects. Through this work, the MCK has been a major player in promoting clean energy projects, such as the Des Cultures Wind Farm project, which align with its values. Addressing the challenges posed by climate change and the loss biodiversity and natural areas are among our top priorities. If a project does not align with Kahnawà:ke's environmental stewardship rights and responsibilities, it will not support the project.

Conversely, the MCK has also played an active role in opposing projects that are not sustainable or that have unjustified impacts on the environment, including non-renewable energy projects, such as pipeline projects. For example, the MCK opposed a major pipeline project despite potential economic and financial benefits for the community because the project ran contrary to Kahnawà:ke stewardship rights and responsibilities. The MCK has also recently opposed a port expansion project because of unacceptable impacts to species at risk and potential exacerbation of cumulative effects suffered by the St. Lawrence River.

With respect to the Hertel Line, the MCK consultation committee has been directly implicated in the environmental and archaeological review process every step of the way. While the environmental assessment work for the Hertel Line is ongoing, the MCK will use our privileged relationship with Hydro-Quebec to provide input on how to minimize the impact to the environment, which Hydro-Quebec has implemented. Given that the line will be buried and use existing rights of way, the impact to the environment will be minimized. We are confident that impacts identified by the MCK consultation committee will be adequately addressed and accommodated by Hydro-Quebec.

Kahnawà:ke's ties to New York City

The MCK is also delighted to be able to contribute to New York's largest renewable energy and transmission project in 50 years. The CHPE line will connect with the New York City power grid in Astoria, which will replace and reduce reliance on much of the energy currently produced by fossil fuel powered plants in the area.

As the Grand Chief of Kahnawà:ke, I recently visited the borough of Queens in New York, which is the current location of fossil fuel powered plants that have had a devastating effect on marginalized communities in Astoria dubbed "Asthma Alley". The Hertel Line is a conduit by which Kahnawà:ke will be helping other marginalized communities' distance themselves from the harmful impacts of the fossil fuel industry.

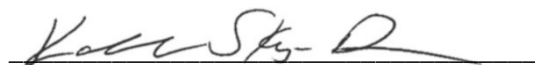
Kahnawà:ke has deep historical ties with the City of New York as is evidenced by the presence of a Kahnawà:ke neighborhood in Brooklyn known as "Little Caughnawaga"¹. During the past century, Mohawk ironworkers have played an integral role in the building of the New York City skyline and surrounding infrastructure. Travelling back and forth between Kahnawà:ke and New York for work is a tradition that many Kahnawà:ke men continue to this day.

Conclusion

The MCK is proud to stand with Hydro-Quebec and all those who are involved in the CHPE project. In the fight against climate change, the MCK is but a small player hoping to do its part. Now Kahnawà:ke has the opportunity through a partnership with Hydro-Quebec to provide clean energy that will be used to illuminate New York's historic landmarks and renew the bonds that we Mohawks have with the City of New York.

In Peace and Friendship,

**ON BEHALF OF THE OFFICE OF THE COUNCIL OF CHIEFS
MOHAWK COUNCIL OF KAHNAWÀ:KE**



Grand Chief Kaysen Sky-Deer

cc. Council of Chiefs, MCK

¹ See short film by the *National Film Board*: "Little Caughnawaga: To Brooklyn and Back", 2008. Online: https://www.nfb.ca/film/little_caughnawaga_to_brooklyn_and_back/