

ENGLISH TRANSLATION FOR REFERENCE PURPOSES ONLY

**AMENDED SUBMISSION ON ENFORCEMENT MATTERS UNDER
ARTICLES 14 AND 15 OF THE *NORTH AMERICAN AGREEMENT ON
ENVIRONMENTAL COOPERATION***

SUBMITTED BY:

**THE SAINT-ADOLPHE-D'HOWARD CITIZENS ADVISORY COMMITTEE
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SUBMITTED TO:

The Commission for Environmental Cooperation

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I. **Executive summary**

The purpose of this submission is to inform the Commission of various failures by Québec (to whom the commitments under the Agreement apply under Article 41 of the Agreement and under Québec law) to comply with various environmental laws when Crown Corporations, in particular Hydro-Québec (which holds a monopoly on transmitting electricity in Québec) apply for permits for hydroelectric projects.

II. **Background**

The Committee is a civic citizen association made up of residents and vacationers from Saint-Adolphe-d'Howard, a municipality in the Laurentians region of Canada's province of Québec, (hereafter called the "**Municipality**"). The Municipality has 3658 residents and an average of 6500 vacation residents.

In or around February 2013, the Crown Corporation Hydro-Québec,¹ owned by the Québec government, announced its intention to build a 120 kV double circuit transmission line from the Grand-Brûlé substation to the Saint-Sauveur substation.² This project involved clear-cutting a considerable number of trees in a forest ecosystem and recreational/tourism area, in particular within the Municipality's territory.

Under the law currently in place, Hydro-Québec must obtain various authorizations from the government and other organizations, in particular from the Régie de l'énergie³ and the Ministère de l'Environnement, for 120 kV double circuit transmission lines,⁴ along with certain authorizations from the ministère des Ressources naturelles and others. The Municipality appeared before the Régie de l'énergie⁵ to contest the route chosen by Hydro-Québec according

¹ *Hydro-Québec Act*, <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/H-5>

² See Annex 1: Project announcement and press release

³ *Act Respecting the Régie de l'énergie*, <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/R-6.01>

⁴ Under the *Environment Quality Act* and its regulations, public hearings must be held with the government's office of public hearings on the environment (*Bureau d'audiences publiques sur l'environnement*—BAPE) for any transmission line of 350 kV or more.

⁵ Decision by the Régie de l'énergie, File D-2016-130 (R-3960-2016) dated 31 August 2016

to various studies and criteria. It should be noted that for Hydro-Québec, the criteria of profitability prevails under the principle, established in the 1960s, according to which Quebecers must pay the lowest possible cost for their electricity. Moreover, the Régie de l'énergie has no jurisdiction or mandate to examine environmental impact issues. Environmental monitoring and protection falls under the purview of the ministry of sustainable development, the environment, and the fight against climate change (*Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques*, hereafter, the "MDDELCC").

Following a decision on the selected route, the MDDELCC must review each project and issue, where necessary, an authorization certificate (hereafter, "AC").⁶ This review consists of an examination conducted by a regional-level civil servant.⁷ In compliance with this procedure, Hydro-Québec filed an AC request on 7 March 2017.

In August 2017, the Municipality filed a document with the MDDELCC proposing various measures to mitigate the impacts of Hydro-Québec's project on the sensitive landscapes and ecosystems of Saint-Adolphe. In particular, the Municipality proposed that the high-voltage line be run underground over a distance of 10 kilometers. The MDDELCC granted Hydro-Québec an AC on 25 August 2017. Neither the Municipality, the Committee, nor any other citizen-led organization was consulted prior to the AC's issuance.

The Municipality learned of the AC's issuance on 28 August 2017⁸ in a letter from the MDDELCC [sic] rejecting the Municipality's proposals. Later, on or around 13 November 2017, when it learned that Hydro-Québec planned to bury an 18-kilometer section of a project that crossed the Canada-US border, the Municipality filed an application for judicial review and an injunction to stop the project.⁹

On 15 January 2018, Justice Christine Baudouin¹⁰ rejected the injunction in the application, basing her decision on criteria that generally apply to any request for judicial review of environmental matters in Québec: it is now required to demonstrate, with supporting evidence, that the MDDELCC has violated a law in issuing an AC. It was also necessary to prove irreparable harm. The Municipality thus abandoned its application.¹¹

Subsequent to the Municipality's discontinuance, Hydro-Québec began deforesting to prepare for the erection of pylons and transmission lines over forests, fields, lakeshores, wetlands, panoramic views, and recreational trails. The Citizens consider that neither the MDDELCC nor the Québec

http://publicsde.regie-energie.qc.ca/projets/354/DocPrj/R-3960-2016-A-0032-Dec-Dec-2016_08_31.pdf

⁶ Authorization certificates are provided for under the *Environment Quality Act*, LRQ c. Q-2

<http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/Q-2>.

⁷ See *Act Respecting the Ministère Du Développement Durable, De L'environnement Et Des Parcs* www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/M-30.001.

⁸ See letter from MDDELCC [sic] to the Municipality, dated 28 August 2017, in Annex 2.

⁹ See claim 500-17-101387-176 in Annex 3.

¹⁰ See decision in Annex 4.

¹¹ See Notice of Discontinuance, Annex 5.

courts truly used its powers or fulfilled its obligations under the *Environment Quality Act*, hence this submission filed with the Commission.

On 6 December 2018,¹² the MDDELCC issued a preliminary notice, warning Hydro-Québec about non-compliances. Hydro-Québec did not comply, which led to an order by the MDDELCC on 12 February 2018.¹³

III. Applicability to Québec of the commitments under the Agreement Article 41 of the Agreement states that Annex 41 applies to the Parties mentioned in that Annex. Paragraph 1 of Annex 41 states that:

On the date of signature of this Agreement, or of the exchange of written notifications under Article 47, Canada shall set out in a declaration a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall be effective on delivery to the other Parties, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify the other Parties six months in advance of any modification to its declaration.

Québec passed the *Act respecting the implementation of international trade agreements*, LRQ c M-35.2, sections 2 and 8 of which make the Agreement applicable in Québec and even allow the Commission to implement a panel determination under Article 36 with the same effects as a Superior Court judgement.

It goes without saying that Québec, as a province of Canada, and through its own legislation cited above, is bound by the commitments of the Agreement and that any failures to meet these commitments are subject to the remedies and investigations set out in the Agreement.

As part of the constitutional distribution of powers, environmental matters concerning forests, wildlife, and plants located within a province's territory fall within the exclusive jurisdiction of the provinces, in this case, Québec.

For these reasons, the Commission can and must consider failures to meet commitments stated in the Agreement made by a province of Canada set out in the list. Québec is included on this list through its own legislation passed by its own legislature and enacted by its executive. We will now describe the failures observed by the citizen members of the Committee that have taken place in Québec.

IV. Failure to meet the general commitment to assess environmental impacts and provide for high levels of environmental protection

¹² See Annex 8

¹³ See Annex 9

It is submitted that the citizens have suffered harm through the clear-cutting of a significant number of trees to clear a path for the pylons, through the construction of temporary forest roads to access the sites, and through the erection of metal pylons and high-voltage lines that will soon be electrified and emit electromagnetic radiation.

The Committee noted that following the project's expeditious approval, its execution caused damage to plant life and water resources.

In particular, the logging and installations caused releases into lakes and streams. Black water is now found in a number of lakes and streams in the region. While Committee members and municipal officials had warned Hydro-Québec about the inadequacy of the means used to prevent such releases and sediment accumulations in lakes, the waters continue to blacken.

Hydro-Québec did not adhere to the mitigation and monitoring measures that would prevent such releases. The sediments continue to accumulate in the lakes and streams.

The MDDELCC issued a preliminary notice on 6 December 2018, followed by a report on 12 February 2019 in which Hydro-Québec was ordered to cease activities causing sediments to be released into the lakes, with which Hydro-Québec did not comply.

The orders from the MDDELCC appear to be insufficient and incomplete in terms of compliance with environmental law.

The MDDELCC has not issued meaningful sanctions or ordered meaningful reparations or mitigation measures for the project.

(...)

V. Requirements under article 14 of NAAEC

In order to clarify how this submission on enforcement matters meets the criteria of article 15 [sic] of NAAEC, the Committee submits the following:

- This submission on enforcement matters aims to ensure that Québec and other Canadian provinces comply with the Agreement by maintaining and keeping their commitments under articles 3 and 6, namely, to ensure high levels of environmental protection and to improve environmental laws and regulations, all of which are objectives of the Agreement. A review of this submission will promote the objectives of the Agreement by, among other things, creating awareness of the exclusionary measures that make projects to construct electricity transmission lines immune from all citizen recourse and participation. Additionally, by reviewing Québec's legislative framework, the Commission for Environmental Cooperation will have an opportunity

to ensure that it meets international criteria for transparency, accessibility, and citizen participation – values shared by most Quebecers.

- The situation has been brought to the attention of the relevant Québec authorities by means cited previously, namely:
 - Correspondence and written submissions in August 2017.
 - Notice of the legal claim and arguments before the Superior Court in December 2018 and January 2018.
 - As previously shown, the Québec government’s response was to ignore written and verbal submissions made by the Municipality (as well as by members of the Committee who reside there) and to vigorously contest the legal proceedings.
- The construction of electricity transmission lines will continue and increase in Québec, since they form part of Québec’s strategic economic plan. It is therefore in the interest of future generations that the substantive and procedural guarantees stated in the Agreement be affirmed.
- The Committee hereby states that this submission is aimed at promoting the enforcement of the law and the Agreement and not at harassing Hydro-Québec or the electricity generation or transmission industry. As stated previously, its participation and even its legal actions have promoted the public interest so that the MDDELCC would consider burying a portion of the high-voltage line in order to reduce or mitigate the environmental impact. The Committee gains nothing by harassing Hydro-Québec because all Québec citizens depend on it for their needs and are proud of its technical prowess. However, having no domestic forum for addressing its grievances, it has no choice but to turn to this supranational body.
- The Committee is made up entirely of Québec citizens.
- The harm suffered by the members of the Committee has been set forth in this submission. To clarify, we repeat that this consists of:
 - Loss of their landscape through logging and the construction of pylons, where the *EQA* defines the environment as the air, soil, water, and trees, and the Laurentians region has had a landscape protection charter ratified by 150 organizations since 2004.
 - Failure to enforce the criteria set out in the *Sustainable Development Act* in approving a project, with no reasoning or explanation from the authorities.
 - Repeated and significant sediment flows into streams and lakes adjacent to major logging and access road construction sites for future pylons 49 to 57.

The lack of mitigation measures in a steep and sensitive area to prevent sediment releases affecting Trois-Frères and Massie lakes (brown and cloudy water). The necessary mitigation measures were not required in the environmental authorization certificate, though they were part of the recommendations made by the Municipality and the citizens (Lac Trois-Frères sector, April 2017). As anticipated, these accumulations did indeed occur.

- Subsequent to the observation (by HQ, the Municipality, and an environment ministry inspector) of sediments in the brook adjacent to the site of pylon 56, Hydro-Québec installed mitigation measures. HQ stated, however, that it took no responsibility for the release. Mitigation measures were thus taken at the site of pylon 56. However, following subsequent sedimentation episodes and an inspection by the environment ministry, it was observed that further mitigation measures were necessary over the entire worksite.
- Noise, dust, and obstructions during the logging and construction periods.
- (...) Loss of property values in the vacation-home sector due to the presence of pylons; possible harms to health of future generations from electrical and magnetic fields.
- Deterioration of water quality and walking paths due to the accumulation of sediments in lakes located in the zone where trees were logged and pylons erected.
- We have established the issues for which the Committee feels the Commission should examine this situation, namely:
 - Regarding article 6 of the Agreement, the complete denial of access to remedies with respect to the execution of hydroelectric projects due to Hydro-Québec's absolute immunity.
 - (...)
 - To determine whether the monitoring and corrective sanctions issued by the MDDELCC comply with articles 2 and 3 of the Agreement.
- As shown, the Municipality attempted multiple means of addressing both the administration and the courts, which were met with categorical denials by these bodies. It is therefore submitted that private remedies have been pursued and exhausted.
- The submitted information is verifiable and true.

Presented respectfully on 11 April 2018.

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LIST OF ANNEXES

ANNEX 1:	Project announcement and press release from 2012–2013
ANNEX 2:	Letter dated 28 August 2017
ANNEX 3:	Judicial claim from 17 December 2017 (<i>amended version</i>)
ANNEX 4:	Decision of 15 January 2018
ANNEX 5:	Notice of Discontinuance dated 21–24 April 2018
ANNEX 6:	Legal Notice dated 19 April 2013
ANNEX 7:	Radio-Canada article dated 20 November 2017
ANNEX 8:	Preliminary notice dated 6 December 2018
ANNEX 9:	MDDELCC order dated 12 February 2019