

# O'Reilly & Associés

A V O C A T S

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Monday, August 2, 2010

**BY EMAIL:** jerry.pell@hq.doe.gov

Dr. Jerry Pell  
Office of Electricity Delivery and  
Energy Reliability  
U.S. Department of Energy  
1000 Independence Avenue SW  
Washington, DC  
20585, USA

**Re: Notice of Intent to Prepare an Environmental Impact Statement  
and to Conduct Public Scoping Meetings –  
Champlain Hudson Power Express, Inc. –  
Submissions of the Uashaunnuat,  
Innu of Uashat mak Mani-Utenam**

Dear Sir,

This has reference to the intention of the Department of Energy (DOE) to prepare an environmental impact statement (EIS) to assess the potential environmental impacts from its proposed Federal action of granting a Presidential permit to Champlain Hudson Power Express, Inc. to construct, operate, maintain, and connect a new electric transmission line across the U.S. – Canada border in northeastern New York State.

The Uashaunnuat, Innu of Uashat mak Mani-Utenam, submit the following statements for your consideration in determining the appropriate scope of the EIS and to assist you in identifying significant environmental, socio-economic and cultural issues.

The Uashaunnuat, the Innu of Uashat mak Mani-Utenam, who are comprised of traditional Innu families, are a First Nation whose traditional lands are located in the North Shore region of Quebec as well as in Labrador, Canada.

The Uashaunnuat assert Aboriginal title, Aboriginal rights and treaty rights in their traditional lands located in Quebec and in Labrador. Their firm position is that any use or occupation of their traditional lands without their consent is unconstitutional and illegal and that all developments, past, present or future, in or regarding these lands or the natural resources thereof cannot proceed without their consent.

The Uashaunnuat affirm that the existing or proposed production and transportation of energy in or across their traditional lands from hydroelectric complexes such as the proposed La Romaine Project, the Upper Churchill Project and the proposed Lower Churchill Project are illegal and that the Governments of Quebec, Newfoundland and Labrador and Canada, Nalcor Energy and Hydro-Quebec have flagrantly breached and continue to flagrantly breach the rights of the Uashaunnuat in respect to those projects (the "Hydroelectric Projects").

The Uashaunnuat state that their consent must be obtained for the Hydroelectric Projects (including the La Romaine Project and the Lower Churchill Project) and was required for all projects of the past located within their traditional lands, but was never sought or obtained.

The position of the Uashaunnuat with respect to the Hydroelectric Projects has been made public through, among others, various judicial proceedings at the Federal Court of Canada and at the Superior Court of Quebec, as well as proceedings before the Public Utilities Board of Newfoundland and Labrador. The outcome of these judicial proceedings is still pending.

The Uashaunnuat have also asserted, in the context of the La Romaine Project and the Lower Churchill Project, that the division of the environmental assessment process into hydroelectric power stations and reservoirs on the one hand and the transmission lines on the other hand is in itself incoherent, arbitrary, illegal and disrespectful of the principles of a sound environmental assessment.

More particularly, the position of the Uashaunnuat is that these projects each constitute a single project comprised of several inseparable components, including the power stations, the reservoirs and the related works, such as roads, transformers and transmission lines. Remarkably, for the purpose of the environmental impact assessment process of these projects, the transmission lines and transformers were totally severed from the remainder of the project.

Considering that the proposed Champlain Hudson Power Express Transmission Line Project ("the Project") may enable or facilitate the construction, operation, maintenance and connection of the Hydroelectric Projects because it may use electricity produced by the Hydroelectric Projects, the proposed Project will have negative and irreparable impacts beyond those identified within the State of New York.

Far from being green energy, the Hydroelectric Projects have significantly and negatively impacted and will significantly and negatively impact the traditional way of life of the Uashaunnuat, their traditional lands, the flora and the fauna and all the natural resources of the territory. These projects also have affected and will affect the intimate relationship between the Uashaunnuat, their traditional lands and the natural resources thereof and would prevent the Uashaunnuat from fulfilling their obligations as the caretakers of their traditional lands which are at the heart of their identity.

The negative impacts on the Uashaunnuat of the Hydroelectric Projects include, but are not limited to:

- net loss of land due to flooding and deforestation and reduced ability of the Uashaunnuat to use the affected lands;
- loss of significant hunting and trapping territories and fishing sites;
- destruction of flora and fauna and their habitat;
- alteration of navigable waters;
- accumulation of mercury;
- reduced quality of water and meat;
- loss of lands used for transmission of traditional knowledge;
- greater access, for non-Aboriginal persons, to the traditional lands of the Uashaunnuat and thus greater use of and stress on the traditional lands by non-Aboriginal persons;
- the noise and electromagnetic field of the transmission lines;
- spreading of chemicals along the transmission lines;
- disturbance of the migration of certain species of fauna (such as the caribou);
- destruction of parts of certain nature reserves (such as the ecological reserve of the Matamec).

There is no doubt that the Uashaunnuat carry out their traditional activities, including hunting, fishing, trapping and gathering, within their traditional lands which are or will be affected by the Hydroelectric Projects and that the negative impacts of these Hydroelectric Projects on the traditional way of the life of the Uashaunnuat must constitute an essential part of any environmental assessment of the Project.

The elements which relate to Aboriginal rights and interests and which should be included in the Project's environmental assessment are:

- The Applicant and the DOE must take into account that the Uashaunnuat claim Aboriginal title over a significant part of northern Quebec and Labrador, at a collective level. The Uashaunnuat constitute a distinct society which has occupied, in an exclusive manner, this part of Quebec and Labrador before assertion of European sovereignty over these lands, continued to occupy these lands and occupy them still, according to a distinctive way of life and customs, practices and traditions which are a part of their distinctive culture.
- The Applicant and the DOE must take into account that the exercise in northern Quebec and Labrador of the customs, practices and traditions of the Uashaunnuat and of their distinctive way of life based on hunting, fishing, trapping and gathering has effectively continued well after contact with Europeans and to this day without extinguishment or voluntary cession.
- The Applicant and the DOE must take into account that any development project, including hydroelectric projects, and all associated works which relate to Uashaunnuat traditional lands and traditional territories of Uashaunnuat families require the consent of the Uashaunnuat and of the affected Uashaunnuat families.

- The Applicant and the DOE must take into account the negative impacts that the Hydroelectric Projects have had and will have on the traditional way of life, fundamental activities, customs, practices and traditions of the Uashaunnuat, the traditional lands and natural resources thereof and the rights and interests of the Uashaunnuat. In that regard, the Applicant and the DOE should meet with representatives of the band council Innu TakuaiKAN Uashat mak Mani-Utenam and with representatives of affected Innu families in order to determine with some degree of precision the negative impacts of the Project. This may include the identification of significant sites, natural resources as well as fundamental activities, customs, practices and traditions which are exercised by the Uashaunnuat in the traditional lands affected by the Hydroelectric Projects.
- The Applicant and the DOE must take into account all works relating to the Hydroelectric Projects, including so-called "preliminary" works, as well as works allowing transportation of energy and access to the traditional lands.
- The Applicant and the DOE must be aware of the judicial proceedings of the Uashaunnuat with respect to their traditional lands and specifically the Hydroelectric Projects.

The Uashaunnuat therefore request that you consider the rights, interests and concerns of the Uashaunnuat in your environmental assessment process and in the evaluation of the impacts of the proposed Project.

Furthermore, the Uashaunnuat request that there be no issuance of a Presidential permit for the Project as long as there is no consent of the Uashaunnuat to the Hydroelectric Projects: as long as there is no consent of the Uashaunnuat to the Hydroelectric Projects, the proposed Project will be inconsistent with public interest and inconsistent with principles of environmental justice and the rights of Indigenous peoples.

We thank you for your consideration of the Uashaunnuat's position and remain,

Yours truly,



O'REILLY & ASSOCIÉS  
Patrycja Ochman