

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

Application of Champlain Hudson Power Express, Inc. for a
Certificate of Environmental Compatibility and Public Need
Pursuant to Article VII of the PSL for the Construction,
Operation and Maintenance of a High Voltage Direct
Current Circuit from the Canadian Border to New York City
**Application to Amend Certificate of Environmental
Compatibility and Public Need.**

Case 10-T-0139

COMMENTS OF INNU NATION OF LABRADOR

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COMMENTS OF INNU NATION OF LABRADOR

Innu Nation is the elected government of the Innu of Labrador, an Indigenous people of Canada (the “Innu”). The Innu Nation respectfully files these Comments in response to the Commission’s Notice Seeking Public Comment issued April 2, 2021.

CHPE LLC and CHPE Properties, Inc. (together, “CHPE”) submitted an Application dated January 29, 2021 to amend the Certificate of Environmental Compatibility and Public Need (“Certificate”) for their proposed project, as well as a subsequent Supplement to the Application filed by CHPE on March 24, 2021.

The project to which the CHPE Application relates is the proposed construction and operation of a high voltage, direct current (“HVDC”) transmission line extending from the border between New York State and the province of Québec to a converter in Queens (“the Project”). The proposed transmission line would bring power generated by Hydro-Québec into New York. CHPE seeks to increase the Project’s capacity by 25%, to 1,250 MWs.

Innu Nation urges the Commission to deny CHPE’s Application. A significant portion of the energy that would flow over the proposed Project’s HVDC line is produced by the Churchill Falls Generating Station – a facility that destroyed vast areas of Innu lands and caused immeasurable damage to the Innu and the environment. It is not clean energy. Allowing even

more of this energy into New York without appropriate redress would further reward the malfeasance committed and directly conflict with the laws and stated policy goals (and moral imperatives) of the State of New York, and as such would be inconsistent with the public interest and applicable law.

I. Background

The Innu have lived on the Québec-Labrador Peninsula for millennia. There is evidence of Innu ceremonies in this area, known as Nitassinan in Innu-aimun, going back at least 6,000 years. The traditional territory of the Innu is in the Northeast portion of mainland North America, shown in yellow in the maps below (Figures 1A and 1B).

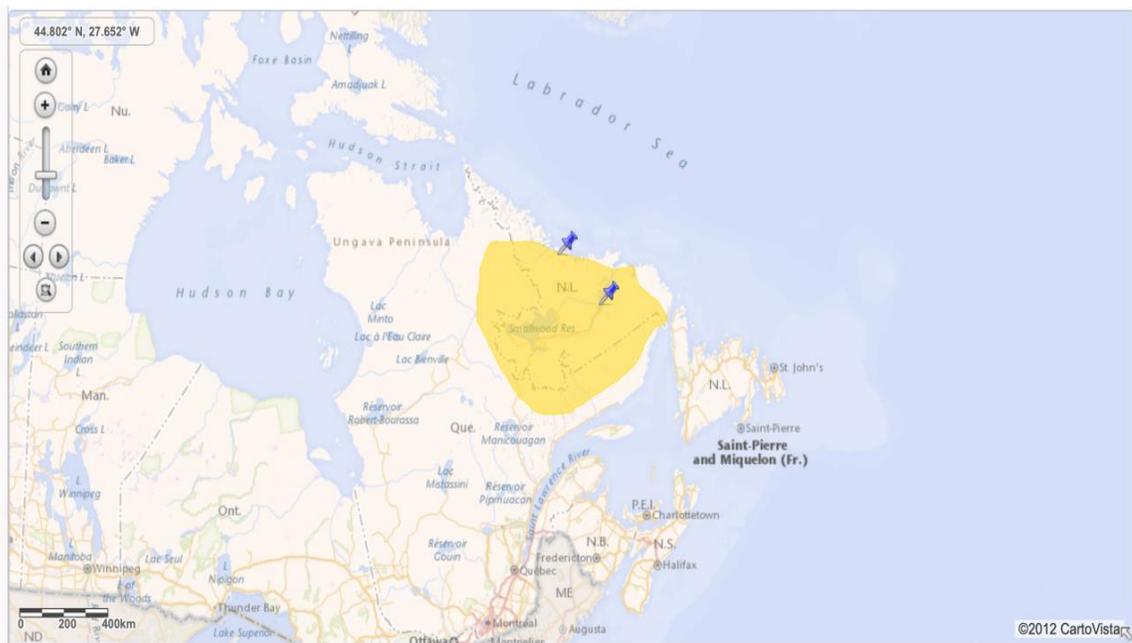




Figure 1A and 1B: Maps of the territory of the Innu of Labrador

The Innu are hunters who travelled over Nitassinan in family groups until the middle of the 20th century, using timeworn travelling routes to hunt, fish, gather and trade. Travelling was central to the Innu identity, since through travel they maintained their social and ceremonial connections with other Innu, neighbouring peoples, and the land. Innu gatherings at central locations for trade and cultural events, including near what is now the Churchill Falls Generating Station (“CF Generating Station”) (marked with a red pin in Figure 1B), have been integral to the Innu way of life.

The Innu’s territory is a harsh environment for those not skilled in living on the land, and this protected them from state interference with their way of life and self-governance for much of the colonial period. However, in the mid-20th century, when the Province of Newfoundland and Labrador (the “Province”) joined Canada, resource developers started looking in earnest at the Innu’s lands, and the Innu were pressured to cease travelling across their territory and forced to

settle in hastily-constructed communities that lacked basic infrastructure. The Innu faced a school system later condemned for rampant child physical and sexual abuse and discrimination due in part to their lack of an adequate English-language education. The Innu also lacked the skill sets for employment in the mainstream economy. Today the Innu reside primarily in two communities, Sheshatshiu and Natuashish, marked by blue pins in Figures 1A and 1B.

The Innu have been fighting for many years to undo the damage caused by these events and actions but still suffer the consequences. Poverty, substance abuse, high rates of suicide, low rates of higher education and other social ills continue to affect the Innu.

II. The Churchill Falls Generating Station

The CF Generating Station is a massive hydroelectric dam in Western Labrador that is powered by the immense, man-made Smallwood Reservoir. It was constructed by the Churchill Falls (Labrador) Company (“CF(L) Co.”) about fifty years ago. Hydro-Québec was and remains one of two shareholders of CF(L) Co. A huge area known to the Innu as Meshikamau and the countless lakes around it were flooded in 1971 with the creation of the Smallwood Reservoir.

Before the Smallwood Reservoir destroyed it, this area was a gathering place for the Innu from across the Québec-Labrador Peninsula. The area was rich in fish and wildlife and was on the migration path of two herds of caribou, which are integral to the Innu diet and cultural and spiritual identity, and was the location of an important Innu spiritual site, Petshishkapushkau. Meshikamau was also a place where the Innu buried their dead.

The river flowing through and from Lake Meshikamau is called the Churchill River in English and Mista-Shipu in Innu-aimun. It was an important travelling route for the Innu and had a significant waterfall. The Meshikamau-Shipu Travel Route has been designated as an Historic Site by Parks Canada in recognition of its historic and ongoing importance to the Innu.

III. Destruction of Innu Land and Way of Life

The Smallwood Reservoir covers an immense area of approximately 2,566 square miles – larger than the State of Delaware. The catchment area of the CF Generating Station is about the size of the State of Maine, and the generating capacity of the is almost three times that of the Hoover Dam. Figure 2 below shows the area flooded by the Smallwood Reservoir, and Lake Meshikamau’s location within that area.

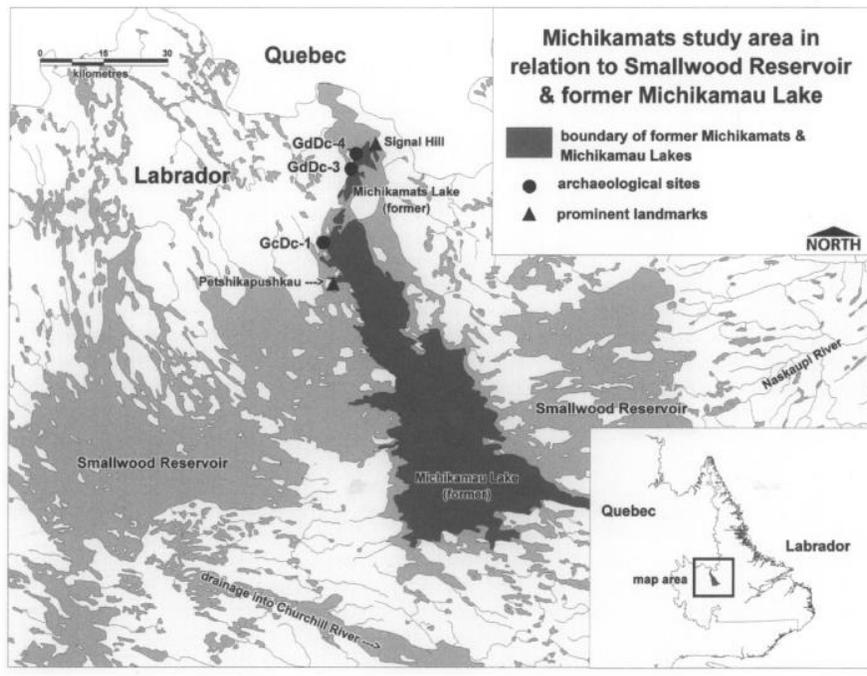


Figure 2 Map showing area of the Smallwood Reservoir overlain on the previous Lake Meshikamau shoreline

Figure 3 below depicts the area flooded by the reservoir together with the Innu travel routes and camps that existed prior to the flooding.

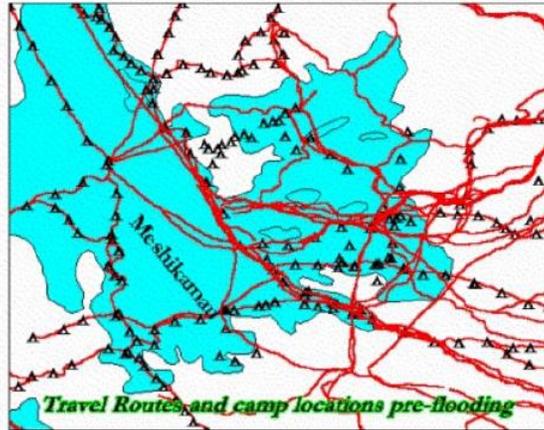


Figure 3 Map showing travel routes and camp locations overlaid by flooded lands.

Damming the Falls and flooding the area above them had devastating impacts. The flooding destroyed the Meshikamau area's waters and lands, and with them the habitats of animals living there. Beaver in the headwater ponds froze to death because of reduced water levels. Salmon spawning grounds were destroyed. Fish living in the reservoir have been poisoned with methylmercury. Caribou calving grounds and waterfowl nesting areas were drowned.

The flooding also eliminated the Innu's ability to use the land. Historic hunting and trapping lands were inundated, and Innu whose families had hunted in the region for generations lost their canoes, traps, caribou-hide scrapers, and other tools that they stored in caches along the river's edges. Innu burial grounds surrounding the waterways were also destroyed, as bones were washed away, burial grounds eroded, and ancestors' graves permanently flooded. The images below show some of this destruction.



Figure 4 Skeletal remains from an Innu cemetery eroding due to flooding.

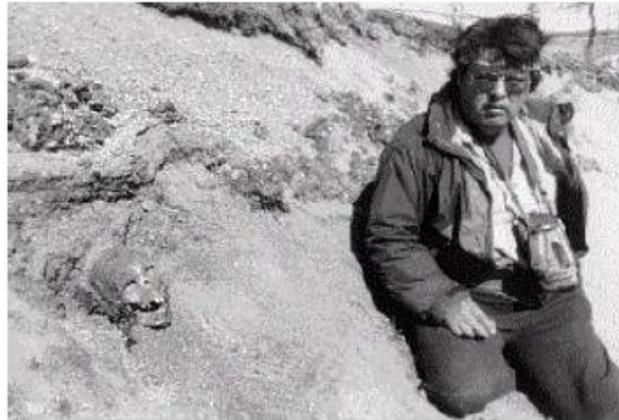


Figure 5 The Late Daniel Ashini on the bank of an eroding Innu cemetery.

The Innu were not consulted about the construction of the CF Generating Station or the flooding resulting from the creation of the associated Smallwood Reservoir. Their consent to these profound, destructive alterations of their lands and waters was neither sought nor obtained. The water level in the reservoir is controlled to maximize the profitability of Hydro-Québec's production of energy at the CF Generating Station, taking no account of the impact and continued destruction of Innu lands and waters, or the environment.

Innu lands and waters, and their plants, animals, and burial sites, remain underwater to this day. It would be difficult to overstate the profound anger, dismay, and sadness that the Innu feel about the flooding of the Meshikamau area, and the destruction the CF Generating Station caused to the plants and animals with whom the Innu shared the lands and waters.

IV. Innu Nation Attempts To Engage Hydro-Québec

The Innu made repeated attempts over many years to meet with Hydro-Québec to address the destructive impacts of the CF Generating Station on the Innu and the environment. Hydro-Québec has responded with indifference and disrespect. This stands in sharp contrast to Nalcor Energy, a Provincial utility, that acknowledged the profoundly harmful impact of the CF Generating Station on the Innu and entered a redress agreement.

Notably, Hydro-Québec is entitled to nearly all the output of the CF Generating Station until at least 2041. Hydro-Québec's annual report lists the CF Generating Station as part of its generation capacity, which represents about one-sixth of Hydro-Québec's total generated energy. That is coincidentally the approximate amount of energy that Hydro-Québec exports.

The CF Generating Station has yielded close to \$28 billion in profits for Hydro-Québec, according to a report by Canada's national broadcaster in 2019. Despite these huge profits - obtained at the expense of the destruction of Innu lands - Hydro-Québec has steadfastly denied its responsibility to compensate the Innu for that harm.

V. The New York Climate Leadership and Community Protection Act

Hydro-Québec wants to sell New York this power and reap billions of dollars from the State's power consumption. The Commission is now being asked to increase the Project's capacity by 25%, which will serve only to increase Hydro-Québec's profits and reward its malfeasance.

New York has, however, enacted the *Climate Leadership and Community Protection Act*, L.2019, c.106 (the “*Act*”). This innovative *Act* recognizes the threat of climate change and the need for New York to take specific action to mitigate harms and to protect disadvantaged communities. Indeed, the *Act*’s Declaration states:

Climate change especially heightens the vulnerability of disadvantaged communities, which bear environmental and socioeconomic burdens as well as legacies of racial and ethnic discrimination. **Actions undertaken by New York state to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities, control potential regressive impacts of future climate change mitigation and adaptation policies on these communities, and prioritize the allocation of public investments in these areas.**¹

The *Act* defines “disadvantaged communities” as including:

areas with concentrations of people that are of low income, high unemployment, high rent burden, low levels of home ownership, low levels of educational attainment, or members of groups that have historically experienced discrimination on the basis of race or ethnicity;²

The *Act* further states the design and implementation of regulations must be done in a manner that seeks to be equitable.³

The Innu have suffered decades of discrimination and the specific harms the *Act* seeks to prevent. The Innu are clearly a disadvantaged community as that term is defined in the *Act*, as the Innu continue to face low income, low levels of educational attainment, and high unemployment. The Innu have also historically experienced and continue to face discrimination on the basis of race and ethnicity.

Innu Nation recognizes that while the focus of the *Act* may be on disadvantaged communities in New York, the overarching goals of promoting the safety, health, and welfare of

¹ L.2019, c.106, §1(7) (emphasis added).

² N.Y. Envir. Conser. L. § 75-0111(1)(c).

³ N.Y. Envir. Conser. L. § 75-0109(3)(a).

disadvantaged communities are certainly applicable in the present case. The Innu are confident that when New York talks about climate justice and the need for equity and consideration in its climate change and energy plans, New York does not mean justice, equity and consideration only for New Yorkers and the complete disregard of the impact of those plans on its neighbors. The project of building equitable and environmentally responsible power and distribution systems cannot be built on underlying injustices. Such projects cannot be built on power generated by a goliath that continues to shirk responsibility for the enormous harms that were and continue to be imposed on clearly disadvantaged communities.

VI. Conclusion

Hydro-Québec paints itself as a provider of clean, environmentally responsible energy. It is not. The energy exported by Hydro-Québec comes from generation facilities that destroyed vast areas of Innu lands. The waters generating the power CHPE seeks to run through New York killed countless animals, poisoned lakes, and flooded important trade routes, cultural locations and burial sites in the Innu's homeland. It is not clean energy.

The Innu Nation respectfully requests that the Commission deny the CHPE Application until CHPE's partner and power supplier Hydro-Québec acknowledges its responsibility for the damage caused by the Churchill Falls Station and reaches an appropriate redress agreement with the Innu. Absent such action, the CHPE request cannot be deemed to be consistent with the public interest or applicable law.

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Respectfully submitted,

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