

August 30th, 2017

Mr. Brian Mills
Senior Planning Advisor
Office of Electricity Delivery and
Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Ave. SW
WASHINGTON, DC 20585

Re: Application for presidential permit OE Docket No 371
Final Environmental Impact Statement– Northern Pass Transmission LLC

Dear Mr. Mills,

The Pessamit Innu First Nation respectfully wishes to submit comments on the Northern Pass Project Presidential Permit Application. The Pessamit Innu First Nation includes some four thousand Pessamiuilnut (registered members), jointly represented by the Pessamit Innu Band Council (Pessamit).

The Context of Pessamit's Intervention

It is not Pessamit's intention to take a position on the specific impacts of the Northern Pass Project in New Hampshire. However, we want to shed some light on our experience with regard to the source of electricity and its environmental and social legitimacy, subjects that are not addressed in the final EIS.

Pessamit Ancestral and Treaty Rights

Our ancestors lived and prospered for 8,000 years on a large part of the territory that is now the Province of Québec. When the Europeans first came into contact with our ancestors in the 16th century, the Pessamiuilnut occupied a specific territory in Northeastern Québec and formed an organized society. We still occupy this same territory, known as "Nitassinan", which means "our land". The Pessamit Nitassinan covers more than 53,000 square miles. The recognition by both Federal and Provincial governments of our continued occupation of the Nitassinan before and after the period of contact with Europeans is the basis of our "Ancestral Rights".

In 1603, Innu Chief Anadabijou concluded a treaty with Samuel de Champlain, which gave permission to the French to settle on the Innu lands. In 1763, during the conquest of Canada by England, the territorial rights of the Innu were again recognized by the "Royal Proclamation", which came from the King of England, George III. These two main historic events are the foundation of our "Treaty Rights".

The Innu Nation has never been conquered, has never given up its rights over its Nitassinan, and has never acceded to any attempt to relinquish its rights.

Negation of our Rights

In the middle of the 19th century, our multi-thousand-year-old way of life began to shift. At that time, the balance of power irrevocably reversed with newcomers moving into our ancestral lands. We were gradually pushed back into the territory and, in 1861, the Pessamit Reservation was created by the government in order to make us sedentary and prevent our traditional activities from impairing economic development. Fortunately for us, this did not work since we only returned at the nearby sea reservation in the spring and summer, depending on the presence of salmon, which has always been our main summer food resource.

The Government of Québec's illicit schemes

After more than a century of setbacks, beginning in 1973 in a series of historic judgments, the Supreme Court of Canada again recognized our Ancestral Rights and the value of treaties with France and England. This led the Canadian Government to enshrine our rights in the Constitution in 1982. From that point on, however, Québec was the only province to refuse this movement. The Québec Government challenged the validity of historic treaties and the existence of our Ancestral Rights. In 1996, the Supreme Court of Canada overturned Québec's ill-founded position.

The Government of Québec's ill will, strategically allowed enough time for Hydro-Québec, a government entity, to invade our Nitassinan. As such, between 1952 and 1978, thirteen (13) hydroelectric plants and eleven (11) reservoirs were, with one exception, implanted on our Nitassinan without impact studies, without our consent and without compensation. This state-run extortion now makes 29% of Hydro-Québec's installed capacity illegally acquired at Pessamit's expense. The Government of Québec, which is Hydro-Québec's sole shareholder, has enabled Hydro-Québec to become one of the largest and most profitable energy companies in the West. In return, Pessamit has been plunged into economic, cultural and social chaos that has no historical equivalent since the contact with Europeans in the 16th century.

Hydro-Québec flooded all major rivers of our Nitassinan with 3,170 sq. mi. of hydro-electric reservoirs. These rivers were used as transport routes based on the availability of seasonal food resources and fur harvesting. It resulted in the forced and brutal removal of the Pessamiulnut from the Nitassinan and their settlement on a reserve that was not and is still not structured to ensure the economic well-being of its population.

Furthermore, the Betsiamites River near the reservation, whose salmon is the historic summer source of our diet, was also destroyed by Hydro-Québec. This salmon is currently on the verge of extinction. Pessamit's right to fish for traditional purposes, although recognized by the Supreme Court of Canada, is simply no longer applicable. The salmon are not there.

It goes without saying that the Government of Québec and Hydro-Québec are, directly and with impunity, violating several historic treaties¹, provincial and federal laws², and three international conventions³, including the United Nations Declaration on the Rights of Indigenous Peoples.

The Northern Pass Project

Pessamit wishes to respectfully confirm that the DOE decision regarding the Northern Pass Project will have a major, albeit indirect, effect on both our Aboriginal Rights and the environment. In fact, the DOE decision could support Hydro-Québec's failure to comply with principles enshrined in the "*United Nations Declaration of the Rights of Indigenous Peoples*" and two international conventions ratified by Canada and United States concerning the protection of salmon.

We are concerned that the Final Environmental Impacts Statement lacks important information about the cross-border environmental impacts of the Northern Pass Project.

In relation to the Northern Pass Project, Pessamit can demonstrate:

- Detrimental and irreversible impacts will affect Pessamit's rights as well as international conventions jointly signed by Canada and U.S.A.;
- Prevailing Québec Government's disregard for the Betsiamites River salmon survival criteria;
- Degradation of the salmon habitat on the Betsiamites River by Hydro-Québec's activities;
- Success of the Atlantic Salmon Priority Action Plan 2016-2020, developed by the NOAA to stabilize and to prevent extinction of the Maine salmon population, counteracted by the failure to implement and enforce measures for the conservation, restoration, enhancement and national management of salmon stocks in Québec's rivers;
- Major modifications and operational changes to Hydro-Québec existing production facilities will be required for Northern Pass;
- Modifications and operational changes to the production facilities have not been evaluated by Hydro-Québec and no measures are planned to mitigate the impacts;
- 29% of the electricity contemplated to be exported to New England by Hydro-Québec still constitutionally belongs to Pessamit.

Status of Hydro-Québec's planned modifications and operational changes to the existing production facilities on Pessamit's Nitassinan

Hydro-Québec confirmed, at page 7 of its Strategic Plan 2016 – 2020 ("Plan stratégique 2016 – 2020")⁴, that they may not have enough existing surplus winter capacity to cope with the combined domestic and exportation demand. In order to address the situation, Hydro-Québec

¹ Historic treaties : « La Grande Alliance – 1603 » - « Royal Proclamation – 1763 »

² Provincial laws : « Act respecting the conservation and development of wildlife » section 128.6 - « Environment Quality Act » section 20 - « Charter of Human Rights and Freedoms » section 46.1 – Federal laws: « Migratory Birds Convention Act » paragraph 5(1) - « Fisheries Act » sections 34(1), 35(1) and 36(3) - « The Constitution Act » 1982 section 35

³ « Convention for the Conservation of North Atlantic Salmon » - «United Nations Convention on the Law of the Sea » - « Declaration on the Rights of Indigenous Peoples »

⁴ www.hydroquebec.com/publications/fr/docs/plan-strategique/plan-strategique-2016-2020.pdf

states at pages 9 and 35 of said document that the total installed capacity of its production facilities on the “Plan Nord” territory (north of the 49th parallel) will be increased by 1,140 MW and that the needed high voltage transmission lines will also be put in place.

This incremental capacity is assumed to be achieved as follows:

- Commissioning of La Romaine-3 Power Station (395 MW) in 2017;
- Commissioning of La Romaine-4 Power Station (245 MW) in 2020;
- Addition of 500 MW on existing production facilities over the 2025 horizon.

Hydro-Québec also states on page 35 of its Strategic Plan that these projects will require agreements with regional communities and concerned First Nations.

- Commissioning of La Romaine-3 and La Romaine-4

These two powerstations are located on Ekuanitshit Innu First Nation traditional territory (Nitassinan). Hydro-Québec has concluded an agreement with Ekuanitshit related to these two projects.

However, to be able to deliver to the market the production of these two powerstations, Hydro-Québec must also complete the “Micoua – Saguenay” 735 KV transmission line, which is currently scheduled to be commissioned in 2022.

The majority of this 260 km proposed transmission line is located on Pessamit’s Nitassinan. Hydro-Québec’s selected route for the power line cuts through an important “*Woodland Caribou*” habitat, an animal listed by the Canadian Government as a threatened species.

Pessamit disagrees with the planned transmission line route and intends to contest Hydro-Québec’s choice through all available dispute settlement mechanisms, including those associated with our Constitutional rights.

- Addition of 500 MW existing production facilities over the 2025 horizon

The addition of 500 MW capacities to existing production facilities located in the “*Plan Nord*” territory is deeply entangled with the raising of the Manicouagan reservoir and the replacement of one unit in the Jean-Lesage generating station (Manic-3)⁵.

Last summer, Hydro-Québec, in contradiction to their official commitment, started raising the Manicouagan reservoir beyond historic water levels without consulting Pessamit, although this is a requirement that has been confirmed many times by the Supreme Court of Canada.

On July 13, 2017, at Pessamit’s request, Justice Serge Francoeur of the Quebec Superior Court ruled that Hydro-Québec must immediately stop the process of filling the reservoir until spring 2018. This judgment, which is equivalent to an interlocutory injunction, also provided that the

⁵ www.hydroquebec.com/publications/en/corporate_documents/sustainable-development-action-plan.html

parties proceed to holding hearings on the issue of a permanent injunction. The Court decision on a permanent injunction will presumably be taken in winter 2017-2018. Should such a permanent injunction be granted, Hydro-Québec would have to re-establish the water level below the upper limit of the drawdown zone observed in the early 1980's (± 350 m) instead of bringing it up to 359,66, as planned.

The Manicouagan reservoir has a surface area of 750 square miles. The raising of the reservoir from its historical maximum level of ± 350 meters to 359,66 meters (29,5 feet) represents ± 22.5 billion cubic yards of additional water in the reservoir.

There are six powerstations in the Manicouagan Hydroelectric Complex:

Manic-5	1 576 MW	(Manicouagan reservoir)
Manic-5 PA	1 064 MW	(Manicouagan reservoir)
René-Lévesque	1 326 MW	(Manic-3 reservoir)
Jean-Lesage	1 259 MW ⁶	(Manic-2 reservoir)
McCormick	235 MW	(Manic-1 reservoir)
Manic-1	184 MW	(Manic-1 reservoir)
Total capacity	5 664 MW	

The water from the Manicouagan reservoir is turbined in sequence at five powerstations which have installed capacity of 5634 MW and a planned capacity of 5664 MW with the modifications contemplated by Hydro-Québec at Jean-Lesage powerstation.

The information needed to evaluate what the additional capacity (MW) would be of adding 22.5 billion cubic yards of water into the Manicouagan reservoir is unavailable to Pessamit. However, it is obvious that a significant portion of the contemplated 500 MW incremental capacity would be generated by the Manicouagan Hydroelectric Complex within Pessamit's Nitassinan.

- The Micoua-Saguenay transmission line, the raising of the Manicouagan Reservoir, the upgrading of Jean-Lesage powerstation and the Northern Pass Project

There is a direct link between the Micoua-Saguenay 735 KV Transmission line, the raising of the Manicouagan reservoir, the replacement of one turbine at Jean-Lesage powerstation, and the incremental capacity that Hydro-Québec has to demonstrate to qualify for base load electricity exports in Massachusetts.

Pessamit will never agree to the proposed transmission line for power from La Romaine 3 and 4 unless Hydro-Québec demonstrates that the proposed transmission line is taking the least damaging route for the threatened "*Woodland Caribou*". If necessary and in due course, Pessamit is ready to file an injunction against Hydro-Québec on this specific question.

The issue of the Manicouagan Reservoir has already been brought to the Court and the final decision is not expected before the end of winter 2017-2018. The planned upgrading of Jean-Lesage powerstation will necessitate consulting with and accommodating Pessamit.

⁶ There are 30 additional MW planned by the replacement of one production unit at the Jean-Lesage generating station.

In these three cases and for any new project undertaken without our consent, Pessamit is ready, if needed, to file a constitutional appeal.

In the *“Clyde River v. Petroleum Geo-Services”* unanimous judgment rendered on July 26, 2017, the Supreme Court of Canada stated that a project authorization that breaches the constitutionally protected rights of Indigenous Peoples cannot serve the public interest. The Supreme Court of Canada has also stated that the National Energy Board (NEB) shall act on behalf of the Crown when making a final decision on a project application. The Supreme Court has recognized that the NEB has broad powers to hear and determine all relevant matters of fact and law, and that its decision must conform to article 35(1) of the Constitution Act of 1982. The article 35(1) of the Constitution concerns Ancestral and Treaties Rights. The Supreme Court concluded that “where the Crown’s duty to consult remains unfulfilled, the NEB must withhold project approval”.

The “Quebec-New Hampshire Interconnection Project” is subject to the approval of the NEB. Pessamit has had numerous contacts with the NEB regarding this project and the NEB is fully aware of the fact that Pessamit has not been adequately consulted. On August 21, 2017, the NEB formally requested Hydro-Québec to comply to the obligations of the Canadian Constitution and with the Supreme Court of Canada decisions concerning Aboriginal Rights. In its letter, the NEB specifically requested Hydro-Québec to provide additional environment evidence as to whether new or modified facilities or changes to the operation of existing facilities are required on Pessamit’s Nitassinan to export electricity through the Northern Pass Project. Hydro-Québec has also been instructed to identify any adverse environmental effects and the corresponding mitigation measures. Hydro-Québec has to provide a reply to the NEB letter by September 1st, 2017⁷.

- Fisheries and Oceans Canada Investigation

It is also important to stress that Hydro-Québec is under investigation by Fisheries and Oceans Canada regarding the article 35(1) of the Canadian Fisheries Act. The investigation concerns more specifically Hydro-Québec’s water management of the Betsiamites River in regard to Pessamit’s Aboriginal fishing Rights. It is reasonable to foresee that Hydro-Québec might be legally obliged in the near future to change the production pattern of the two powerstations installed on the Betsiamites River.

- Hydro-Québec’s correspondence to the DOE

Pessamit is aware of three pieces of correspondence sent by Hydro-Québec to the DOE regarding the Northern Pass Project (April 11, 2011, June 6, 2016 and May 23, 2017). All these letters have been signed by Hydro-Québec’s Production President, Mr. Richard Cacchione.

In the April 11, 2011 correspondence, Hydro-Québec writes:

“We feel compelled to point out that for all hydropower projects of recent

⁷ <https://apps.neb.one.gc.ca/REGDOCS/Fichier/T%C3%A91%C3%A9chargement/3320332>

decades, huge public consultation program with the various communities concerned, both Native and non-Native, have been undertaken. The projects are also covered by formal agreements with the Native communities on the impacts and benefits."

"We would like to point that hydropower projects carried out in Québec are subject to a very thorough environmental and social impact assessment by two levels of government, provincial and federal. Canada's environmental regulations are among the most stringent in the world."

In the June 6, 2016 correspondence, Hydro-Québec writes:

"Hydro-Québec develops its hydropower resource in an environmentally acceptable way and only after it "undergoes rigorous environmental assessment". http://hydroquebec.com/publications/en/sd_action_plan/pdf/plan_actiondd.pdf at 4. The company is renowned around the world for its environmental approach to developing projects and avoiding, mitigating or compensating a project's impacts."

In the May 23, 2017 correspondence, Hydro-Québec writes:

"In all HQ hydroelectric projects, the mercury issue is carefully evaluated during the environmental impact assessment phase. Our project authorizations include obligations related to monitoring and mitigation measures to ensure not to expose the public to health risks."

In the case of Pessamit, we assert that all of the statements above are unfounded.

Thirteen hydroelectric power plants and eleven reservoirs were, with one exception, implanted on our Nitassinan without impact studies, without our consent, and without compensation. All together, there is 29% of Hydro-Québec's installed capacity illegally acquired at Pessamit's expense. These facts totally contradict Hydro-Québec's official statements cited above.

Hydro-Québec's last statement on the mercury issue, with one exception, does not correspond to Pessamit's experienced reality. Moreover, the present-day raising of the Manicouagan reservoir by some 30 feet has never been subject to an EIA and the mercury issue has received any consideration.

The preceding Hydro-Québec statements are misleading to government regulatory agencies like the DOE, as well as New England residents.

As an additional illustration of misleading information, in a letter published on January 16, 2016 in the *Concord Monitor* newspaper in New Hampshire, Hydro-Québec writes:

"The displacement of Indigenous populations as part of Hydro-Québec projects is a myth. Hydro-Québec and Aboriginal peoples have developed various partnerships in order to provide economic spinoffs of its projects to communities (...)."

The historical reality is far different. It has been clearly proven that from the '50s onwards, the Québec Government has exerted pressure to force the settlement of the Pessamiuilnut. As such, families who brought their children to the Nitassinan to practice traditional activities were deprived of family allowances. Coincidentally, it is precisely at this time that many hydroelectric megaprojects were implemented, forcing the Pessamit Innu First Nation from its vast traditional territory to live on a small reservation.

Hydro-Québec has ravaged the Pessamit social harmony and rendered it destitute. We strongly state that the forced migration of our entire First Nation is a defining act of a cultural genocide.

- Conclusion

The Pessamiuilnut have been living for more than 8,000 years in the Nitassinan and still aspire to prosper in respectful harmony with our natural heritage. However, Hydro-Québec production activities have profoundly affected the integrity of our Nitassinan and have directly collided with our Ancestral and Treaties Rights.

For decades, Pessamit has tried to work within the confines of the democratic and political venues in Québec to enforce the recognition of its rights. Our action outside of Canada's borders aims to change the course of history or, at least, to make New Englanders aware that 29% of the electricity that Hydro-Québec intends to sell through the Northern Pass Project was acquired in an immoral and illegal manner, to the detriment of Pessamit.

We hope we have highlighted Pessamit's legitimate concerns about the repercussions of implementing the Northern Pass Project. You can also obtain more information by visiting: http://Pessamitsgreenenergy.com/new_england/index.html, where you will find the full presentation we have made on numerous occasions in New Hampshire, Massachusetts, and Connecticut. In order to corroborate our statements, we would be pleased and honoured to welcome on our Nitassinan a delegation from the DOE to objectively assess Hydro-Québec's so-called "clean energy".

We urge you to take into consideration our standpoint, especially the aspects based on principles of international law, as part of your decision regarding the Northern Pass Project. We remain available if you need further information.

Sincerely yours,

The Pessamit Innu First Nation Chief



René Simon

c.c. : see attached list

Courtesy copies

New Hampshire

Senator Jeanne Shaheen
Senator Margaret Hassan
Congresswoman Ann McLane Kuster
Congresswoman Carol Shea-Porter

Governor Chris Sununu
Ms. Pamela G. Monroe
Mr. Chris Aslin

Massachusetts

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Appalachian Mountain Club
Conservation Law Foundation
Sierra Club
Society for the Protection of New Hampshire Forests