DIONNE SCHULZE
S.E.N.C.
AVOCATS • ATTORNEYS

507 Place d'Armes # 1100
Montréal, Québec
Canada H2Y 2W8
TEL 514-842-0748
FAX 514-842-9983
www.dionneschulze.ca

dschulze@dionneschulze.ca

COURTESY TRANSLATION

June 12, 2012

BY EMAIL TO: <Labrador-Island.TransmissionLink@ceaa-acee.gc.ca>
AND <pmarrie@gov.nl.ca>

Mr. Bill Coulter
Project Manager, Labrador-Island Transmission Link Project
Canadian Environmental Assessment Agency
1801 Hollis Street, Suite 200
Halifax, NS B3J 3N4

Re: Labrador-Island Transmission Link; your file no. CEAR 10-03-51746;
Our file no. 7550/001

Dear Sir,

Please find enclosed the submission of the Conseil des Innus d'Ekuanitshit in response to the call for public comments on the Environmental Impacts Statement submitted by Nalcor Energy for the above-mentioned project.

Yours,

DIONNE SCHULZE

David Schulze

cc: Chief Jean-Charles Piétacho
Conseil des Innus de Ekuanitshit
BY FAX: 418-949-2085

COMMENTS ON THE ADEQUACY OF THE ENVIRONMENTAL IMPACT STATEMENT ON THE LABRADOR-ISLAND TRANSMISSION LINK

CEAR 10-03-51746

Conseil des Innus d'Ekuanishit

Based on comments by
Dr. Fred Whoriskey,
Dalhousie University

June 12, 2012

1. INTRODUCTION

1.1 Context

Nalcor Energy submitted an Environmental Impact Statement (EIS) to the Canadian Environmental Assessment Agency in order to obtain the necessary authorization for the construction of a high voltage direct current (HVdc) transmission link. The purpose of the Labrador-Island Transmission Link is to transmit the energy produced to the Newfoundland and to proposed mining projects in Labrador.[1]

The five-volume EIS was submitted to the public on April 16, 2012. Although the proponent provided no funding for the Conseil des Innus d'Ekuanitshit ("Council") to review EIS, Council nevertheless felt obliged to bear the cost of a review due to the level of concern expressed by the community. Prof. Fred Whoriskey of Dalhousie University was hired to review the EIS and comment specifically on the potential impacts most likely to affect the wellbeing of the Innu of Ekuanitshit.

Of particular concern to the community are the Atlantic salmon stocks that migrate through the Strait of Belle Isle before returning home to spawn up the rivers of the North Shore of Québec. Also, the woodland caribou herds, which travel throughout northern Québec and Labrador, are also of concern.

The objective of this review was to determine the quality of the studies, the adequacy of the methodology used, and to assess whether the protection of the salmon stocks and caribou are sufficient to ensure the continued survival if this project were to go ahead.

1.2 Innu of Ekuanitshit

Nalcor remains committed to its understanding that the "available data do not indicate contemporary traditional land use by the Innu of Ekuanitshit in or near the transmission corridor or Study Area" (EIS p.15-140). This artificially narrow understanding of the potential impacts of this project is convenient for the proponent and yet unrelated to the realities of Innu life or the principle of the ecosystem approach. Throughout the EIS of the Labrador-Island Transmission Link, it is acknowledged that there may be potential negative impacts on the caribou herds and other animal life, as well as marine life including salmon stocks. Given the Innu of Ekuanitshit's reliance on this wildlife their subsistence living, cultural practices and economic security, the need to consult and accommodate this community is undeniable.

1.3 Environmental Impact Statement Overview

Certain shortcomings in the design and undertaking of this EIS have undermined the entire assessment. It is clear from the start that the scoping of this project is not in conformity with *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2 or with basic ecological principles. Scoping plays a critical role in ensuring cumulative impacts are properly taken into

[1] http://www.cbc.ca/news/canada/newfoundland-labrador/story/2012/06/07/nl-alderon-muskrat-falls-607.html

consideration. This is particularly true for mega-projects such as this one that cover an enormous amount territory.

Additionally, the decision to rely predominantly on literature reviews to determine potential impacts provides a significantly less reliable foundation upon which to determine impacts than if proper scientific studies had been undertaken. These studies would have established baseline information critical to assessing harm and implementing mitigation measures. Often the literature consulted is regarding foreign environments of little relevant to Labrador and Newfoundland. Moreover, literature gaps resulted in having the proponent speculate as to potential impacts providing even less reliable data. This approach flies in the face of the precautionary approach.

2. ATLANTIC SALMON

While these anadromous fishes spawn in rivers, they spend most of their lives at sea. Recent studies are demonstrating a growing understanding of the critical importance of the Strait of Belle Isle plays in fish migration.[2] As the Atlantic salmon fished by the Innu of Ekuanitshit pass through the Strait of Belle Isle, the transmission link would have a direct effect on the Innu of Ekuanitshit.

The majority of Atlantic salmon populations from Lake Ontario to the Bay of Fundy are listed as either threatened or endangered.[3] The future survival of wild Atlantic salmon, amongst other species, is in a precarious state. Various dimensions of this proposed transmission link have the potential to cause significant harm to the Atlantic salmon population. Although the comments provided below will focus on the operational and management phase of the transmission link, it is essential that the construction phase be conducted in the least harmful manner. Specifically, no construction should occur during the migratory period for the Atlantic salmon through the Strait of Belle Isle.

Recommendation #1 – Do not undertake construction of the transmission link during the Atlantic salmon migration period through the Strait of Belle Isle.

2.1 Electromagnetic Fields

Nalcor acknowledges the project activities would cause both harmful underwater noise and electromagnetic (EM) emissions potentially altering fish migration patterns and behaviours (EIS 14-7). As salmon contain magnetite, which is believed to help them migrate long distances with accuracy, they are deemed to be one of the species most vulnerable to the affects of EM emissions (EIS 14-41). For the Innu of Ekuanitshit who rely on the successful return of the

[2] See for example: <http://www.asf.ca/research_videos.php> and <http://thechronicleherald.ca/heraldmagazine/100191-great-big-sea-ns-companies-plumb-depths-of-3-trillion-market-for-ocean-tech>

[3] COSEWIC Wildlife Database. See: <http://www.cosewic.gc.ca/eng/sct1/SearchResult_e.cfm?commonName=atlantic+salmon&scienceName=&Submit=Submit>

Atlantic salmon to spawn up the rivers along the North Shore, the prospect of having the migration altered is of significant concern.

This admission of possible dangers to salmon populations in the EIS is followed by a wholly inadequate assessment of the potential impacts on the basis of limited and out-of-date scientific literature. More needs to be done to determine the potential threat EM emissions pose to Atlantic salmon stocks and other vulnerable species.

In determining possible impacts on migration and fish behaviour, the proponent should determine and list the migratory routes of potentially affected species. The failure to establish this basic baseline information makes effective monitoring impossible.

In summarizing the potential negative impacts of the transmission link, Nalcor states the following:

> There is a low to moderate degree of confidence that the level of effect will not be greater than predicted because there is greater uncertainty with respect to some of the residual effects on the Fish relative to those discussed for the other two KIs. (EIS 14-45)

While the meaning of this sentence is unclear, it would be significantly more reassuring if the proponent had a high degree of confidence with regard to the predicted effects on fish populations.

With regard to considering the cumulative impacts, Nalcor chose to exclude the Emera Maritime Link because the projects do not overlap (EIS 14-49). In the case of creating electromagnetic fields (EMF), the fact that together these lines would alter both entrances to the Gulf of the St. Lawrence could have important cumulative impacts. Therefore it is inappropriate to exclude the Emera Maritime Link from this assessment.

Recommendation #2 – Undertake meaningful analysis of the potential impacts of electromagnetic fields on Atlantic salmon migration patterns.

Recommendation #3 – Determine baseline conditions against which effective monitor can occur with regard to impacts from the electromagnetic fields.

Recommendation #4 – Include the proposed Emera Maritime Link in the cumulative impacts assessment when determining impact of electromagnetic emissions.

2.2 Water Crossings

Hundreds of water crossing are expected to be necessary for the construction of access infrastructure. These water crossing are said to include “fording, culvert installation or bridge installations” (EIS 3-48). As acknowledged by Nalcor, improperly designed, installed or maintained culverts are notoriously harmful to fish stocks (EIS 13-41). A commitment by

Nalcor to install fish-friendly culverts is essential to allow for the free movement of the fish upstream to allow for spawning.

In order to protect Native fishing rights, the Courts ordered the State of Washington to repair or remove its problematic culverts that impede salmon spawning grounds.[4] Having to retrofit construct in this manner should be avoided right from the start to avoid costly litigation and costly repairs.

Recommendation #5 – Commit to using and properly installing fish-friend culverts wherever water crossing as inevitable.

2.3 Herbicide Use in Riparian Zones

Nalcor's assurance that the toxic herbicides used near aquatic life will be applied "in a careful manner, following manufacturers' instructions and in accordance with the Pesticides Control Regulations 1996" is a feeble commitment indeed. In order to protect wildlife, additional commitments must be made to using the least harmful methods, including alternatives to toxic herbicides for vegetation management, particularly in riparian zones.

Recommendation #6 - Commit to the least harmful vegetation management control strategies above and beyond the most basic legal requirements.

3. WOODLAND CARIBOU

As noted above, the caribou are also a critical source of food for the Innu and an integral part of their traditional and contemporary culture. It is clear that there are many potentially harmful effects that could arise as a result of this project, such as from the extensive use of herbicides, the increased human access, and habitat fragmentation.

3.1 Access Roads

No information is provided with regard to the location of the access roads that will be required to transport personnel, equipment and materials. The only information that is provided is a prediction of the number of additional kilometres of road that will need to be built (EIS 3.4.3.1). As these roads will cause additional habitat fragmentation and will allow for increased human access to hunt and fish wildlife, more precise information is required.

Nalcor acknowledges that "OHV access by the public along the ROW will likely be an issue throughout the Operations and Maintenance Phase of the Project". Although it states it will develop "access control measures… to manage public OHV use of the ROW and Project roads and trails", specifics must be provided regarding what control measures are envisioned to determine their effectiveness.

[4] *United States v. Washington (Culverts Opinion)*, No. C70-9213, Subproceeding No. 01-1, 2007 WL 2437166 (W.D. Wash., 22 August 2007).

Recommendation #7 – Provide specific information with regard to the length and location of access roads for construction and operations.

Recommendation #8 – Commit to replanting access roads no longer required post-construction.

Recommendation #9 – Provide additional information regarding the access control measures for new roads.

4. CONCLUSIONS

Due to the scale of this project and its capacity to cause significant, long-lasting harm to the environment and the Innu was of life, it is inappropriate that Nalcor refused to provide funding to the Conseil des Innus d'Ekuanitshit to review the Environmental Impact Statement. The continued denial by the proponent of the potential direct impact this project, along with the proposed Lower Churchill Hydroelectric Project, would have on Ekuanitshit is dishonest. These two projects threaten various wildlife species critical to Innu culture and sustenance. However, due to limited time and funding this review focused on the two most vulnerable and important species likely to be harmed by this project.

The Atlantic salmon upon which the Innu of Ekuanitshit rely migrate through the Strait of Belle Isle. Similarly, the woodland caribou herds fundamental to Innu life migrate through the transmission link zone. Therefore the terrestrial, freshwater and marine components of this project have the capacity to impact the Innu of Ekuanitshit's lives and wellbeing. The recommendations enumerated above are designed to mitigate the harm of this project, should it be approved. It should be stated, however, that despite these recommendations, the Conseil des Innus d'Ekuanitshit oppose this project due to the inevitable negative impacts it would have on the environment.