



**NORTH AMERICAN MEGADAM RESISTANCE ALLIANCE**

May 18, 2020

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U.S. Department of Energy  
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Re: Comments on DOE Docket No. PP-362-1: Champlain Hudson Power Express, Inc. and CHPE, LLC: Application to Rescind Presidential Permit and Application for Presidential Permit

Dear Mr. Lawrence,

The Sierra Club Atlantic Chapter and North American Megadam Resistance Alliance submit these comments on the above-referenced application of Champlain Hudson Power Express, Inc. (CHPEI) and CHPE, LLC (together, the Applicants) to transfer to CHPE, LLC ownership of the facilities owned by CHPEI and authorized for cross-border electric power transmission via a high voltage direct current line (the Project) by Presidential Permit No. PP-362, dated October 6, 2014 (PP-362 or the Permit).<sup>1</sup> The Project is being developed by TDI, a Blackstone portfolio company. [www.transmissiondevelopers.com](http://www.transmissiondevelopers.com) Blackstone is a private investment firm with about \$500 billion under management. [www.blackstone.com](http://www.blackstone.com)

The Sierra Club Atlantic Chapter, headquartered Albany New York, is responsible for the Sierra Club's membership and activities in New York State and works on a variety of environmental issues. The Sierra Club is a national environmental organization founded in 1892.

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<sup>1</sup> On April 6, 2020, the Applicants requested that the Department of Energy (DOE) amend, or in the alternative, rescind and reissue PP-362 to enable the transfer of the Permit from CHPEI to its affiliate CHPE, LLC (the Application). On April 16, 2020, the Department of Energy (DOE) issued a Notice of "Application to Rescind Presidential Permit; Application for Presidential Permit; Champlain Hudson Power Express, Inc. and CHPE, LLC." (the Notice). 85 Fed. Reg. 74 (April 16, 2020). <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulation/pending-applications>

The Sierra Club Atlantic Chapter has members and supporters with specific, concrete interests in issues raised by PP-362.

The North American Megadam Resistance Alliance (NAMRA) is an alliance of groups and individuals whose mission is to protect rivers and their communities. NAMRA's alliance includes groups and individuals living and working in Canada and in the State of New York who have a specific, concrete interest in the issues raised by PP-362.

The Chapter and NAMRA (together, the Groups) submit the following comments on factors relevant to the public interest and the specific, concrete interests of the Groups' members and supporters in DOE's decision to grant or deny the Application. The Groups request that DOE deny the Applicants' request for a new Presidential Permit unless and until Applicants file a new or amended Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) and DOE issues a new or amended Record of Decision (ROD).

### **Background**

Applicants seek to develop the Project to connect electricity produced by Hydro-Quebec "in central and eastern Canada", with "load centers around the New York City and southwestern Connecticut regions." PP Application Jan. 25, 2010, 2.1. While Applicants and Hydro-Quebec claim the power for CHPE is "clean green and renewable" this is inaccurate as is well documented by peer reviewed science, numerous reports and testimonials by Indigenous community members and settlers in Canada.

Hydro-Quebec produces electricity at 86 generating stations in Quebec, of which 62 are hydroelectric and 24 are gas and diesel. *United States Securities and Exchange Commission, Form 18-K, for Foreign Governments and Political Subdivisions Thereof, Annual Report of Hydro-Quebec, Quebec, Canada, for the fiscal year ending December 31, 2019.* (Form 18-K), p. 10. Hydro-Quebec thorough an affiliate sells and buys power generated by large dams, fossil fuels and nuclear in Manitoba, Ontario, New Brunswick and Nova Scotia. Form 18-K, p. 12. In addition to dams in Quebec, the sources of Hydro-Quebec power include the 5,428 MW Churchill Falls dam in Labrador and hydropower from international mining conglomerate Rio Tinto Alcan (RTA), which uses large dams to run its aluminum smelting operations. Form 18-K p. 11. <https://www.cpcml.ca/Tmld2012/D42013.htm>

The Applicants' mere five-page April 6, 2020 application states the Applicants "request that PP-362 be amended to name CHPE, LLC as the permittee, or in the alternative, rescinded and reissued to CHPE, LLC, to reflect the recent internal corporate restructuring that resulted in the creation of CHPE, LLC for business-related purposes." Application, p. 4. Applicants' officer filed a Verification Statement with the five-page application stating that the facts and representations in the Application are true and correct to the best of his knowledge.

As shown below, substantial material facts in the Application are inaccurate and/or misleading. Moreover, material circumstances and assumptions upon which DOE based its

decision to grant PP-364 in 2014 have changed or are the subject of pending permit amendments with other regulators. Notably, the Applicants failed to disclose this in the April 6, 2020 Application.

Before DOE can issue a new Presidential Permit to CHPE, LLC, DOE must determine the new permit is in the public interest. In making this determination, DOE will consider the environmental impacts of the proposed action and determine the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE may also consider relevant to the public interest. DOE also must obtain the favorable recommendations of the Secretary of State and the Secretary of Defense before taking final action on a Presidential Permit application.

As shown below, Applicants have failed to provide adequate information to show that the transfer of the permit and reissuance to a new entity meets the standards for issuance of a new permit. DOE cannot simply "change the name" on PP-362 to facilitate the corporate convenience of Blackstone/TDI and the Applicants while ignoring material and substantial inaccuracies and changes in the \$3 billion project.

**1. CHPE's high-voltage direct current (HVDC) transmission corridor crosses the U.S.-Canada border over land, not underwater as claimed in the Application and as approved in PP-362.**

The Application states the system will "cross the United States-Canada international border underwater near the Town of Champlain, New York..." Application, p. 3. This is inaccurate. Hydro-Quebec has no intention of bringing its transmission corridor across the border under water. Instead, the Hydro-Quebec corridor route crosses the border on land, near Rouses Point, a Village in the Town of Champlain, New York.

The overland border crossing from Canada to the U.S. is described on Hydro-Quebec's website. It shows Hydro-Quebec plans to bring the corridor south over land from its Hertel substation near Montreal. The route to the US border "comprises the construction of a 58 km long 32-kV underground direct-current (DC) line between the Hertel substation in La Prairie and the Canada-United States border...the new line will connect to the Champlain Hudson Power Express (CHPE) project currently under study in the United States." <https://www.hydroquebec.com/projects/hertel-new-york-interconnection/> (describing the April 2019 update, last visited 5/12/2020). The Hydro-Quebec website identifies the route as via Route 223 in Quebec to Route 11 into New York. <https://www.hydroquebec.com/projects/hertel-new-york-interconnection/environmental-studies-line-routing.html>

The DOE 2014 Final Environmental Impact Statement (FEIS) for PP-362, Map S-2 shows Hydro-Quebec's transmission corridor on land at the US-Canadian border. See, Figure S-2, FEIS Summary. The Overview in FEIS Vol. II, Section 1.1, states the transmission project will cross

the international border between the United States and Canada “near the village of Rouses Point, New York” which is in the Town of Champlain, thus also on land.

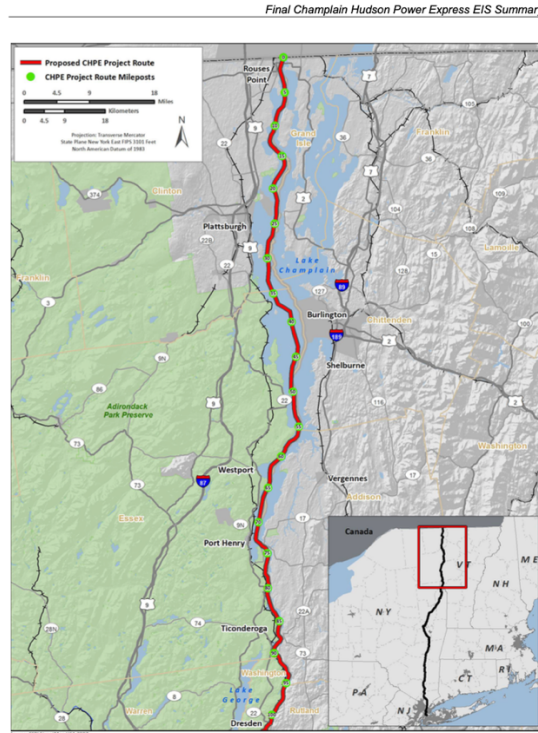


Figure S-2. Lake Champlain Segment

By contrast, Figure S-2, FEIS Appendix 1, Map Atlas 1, shows the transmission corridor suddenly appearing out of the water at the Canada-US border the center of the Richelieu River. There is no description of how it gets from land in Canada and emerges submerged under water in the center of the River to cross the border. The Applicants’ map in its Army Corps of Engineers Section 404 permit contains the same inaccuracies.



These inaccuracies are reflected in Article 2 of PP-362 Order which states that a 1,000 MW HVDC voltage source converter controllable transmission system, comprised of one 1,000 MW HVDC pole “would cross the international border from Canada into the United States *under water in Lake Champlain*, in the Town of Champlain, New York.” (emphasis supplied) There is no documentation to support this statement in PP-362.

These irreconcilable inconsistencies as to the border crossing location in the Applicants’ own documents and what Hydro-Quebec has planned for the location of the border crossing constitute a fundamental flaw in PP-362. The DOE cannot simply “reissue” PP-362 in the name of Blackstone’s new entity for Blackstone’s convenience. Rather, DOE must require the Applicants to submit a new or amended permit application with a revised environmental impact statement under NEPA that resolves the inconsistencies in the Applicants’ own maps and corrects the substantial, material factual errors as to this key aspect of PP-362. The revised Application must show the level of detail required by 10 CFR Section 205.322(b)(iii)(2):

A general area map with a scale not greater than 1 inch = 40 kilometers (1 inch = 25 miles) showing the overall system, and a detailed map at a scale of 1 inch = 8 kilometers (1 inch = 5 miles) showing the physical location, longitude and latitude of the facility on the international border. ***The map shall indicate ownership of the facilities at or on each side of the border between the United***

*States and the foreign country. The maps, plans, and description of the facilities shall distinguish the facilities or parts thereof already constructed from those to be constructed.* (emphasis supplied)

**2. Applicants plan to increase the amount of electricity to be carried on CHPE line from 1,000 to 1,250 MW, but PP-362 authorizes only 1,000 MW.**

PP-362 is for a 1,000 MW HVDC transmission system. The Applicants plan to increase this to 1,250 MW. The Applicants' website states it will be "delivering between 1,000-1,250 MW" to New York. Transmission Developers, Inc./CHPE Website, <https://chpexpress.com/last visited 5/11/2020>. TDI's CEO, Don Jessome stated this publicly as reported in 2019:

"The developers of a permitted transmission line to bring Canadian hydropower to New York City are considering an increase in the amount of electricity the line could carry. Blackstone-backed Transmission Developers, Inc., is considering boosting the capacity of the proposed 330-mile long Champlain Hudson Power Express high-voltage, direct current line by 250 megawatts, said CEO Don Jessome, in an exclusive interview with POLITICO. That would bring the total capacity to 1,250 megawatts."  
<https://www.politico.com/states/new-york/newsletters/politico-new-york-energy/2019/06/12/chpe-capacity-boost-251821> accessed 5/11/2020

The Application fails to disclose this material fact, stating the project is "a 1,000 Megawatt (MW), high-voltage direct current (HVDC) underground and underwater merchant transmission system that will cross the United States-Canada border underwater near the Town of Champlain, New York."

**3. The project is supported directly and indirectly by Hydro-Quebec, an instrumentality of the government of Canada, contrary to verified statements in the Application.**

Under 10 CFR Section 205.322(a)(4), an applicant for a Presidential Permit must "disclose whether the applicant or its transmission lines are owned in whole or in part by a foreign government or directly or indirectly assisted by a foreign government or instrumentality thereof; or whether the applicant has any agreement pertaining to such ownership by or assistance from any foreign government or instrumentality thereof." The Applicants have failed to disclose direct and indirect assistance they received and continue to receive for the Project from **both the Quebec government directly and Hydro-Quebec, an agent of the Quebec government** and have made representations to the contrary under oath.

Hydro-Quebec is an "agent of the [Canadian province of] Quebec." Form 18-K p. 8. Hydro-Quebec's sole shareholder is the government of Quebec province, Canada. Effectively, the Quebec government and Hydro-Quebec are one and the same, whether Hydro-Quebec describes itself as an "agent" of the government or not.



The Quebec government actively engages in selling, marketing and promoting Hydro-Quebec's export product – electricity -- to the United States and the CHPE corridor itself. The corridor and the export product are interdependent. Without a corridor, the Quebec government has no market for the export of electricity exports by its agent, Hydro-Quebec. Without the product of the agent of the Quebec government, the Applicants have no transmission corridor. The Quebec government and Hydro-Quebec, its agent, have a self-interest in making the Project happen and spend money and time trying to make it happen.

Quebec Premier Legault visits New York City and the U.S. regularly to promote Canadian hydropower exports. He wants to make Quebec “the battery of North America.”

<https://montrealgazette.com/news/quebec/francois-legault-presents-electric-vision-of-quebecs-green-future>

The Quebec governments' filings under the Foreign Agents Registration Act (FARA) <https://www.justice.gov/nsd-fara> , document the direct and indirect assistance by the Quebec government and its agent, Hydro-Quebec for the Project. The Quebec Government Office is registered as a foreign agent in the U.S. and maintains an active presence in New York City. For the six months ending December 2019, the Quebec Government Office's total expenses in the U.S. were over \$4.9 million including meetings, events, publications and disseminating informational materials to public officials, government agencies, newspapers and civic groups or associations to promote Quebec, including Hydro-Quebec's energy exports. Supplemental Statement, six months ending December 31, 2019, Quebec Government Office, NSD FARA registration, Answer to question 20. Available online from Department of Justice, FARA filings. This included engagements with officials, government agencies and non-profit groups directly connected to or with a stake in the regulatory approval of the CHPE project.

From July to December 2019, the Quebec government and/or Hydro-Quebec assistance to the Project and the Applicants included the following sales, marketing and promotional activities:

- Meetings with: New York Independent Service Operators, Alliance for Clean Energy, New York State Department of Environmental Conservation (which granted a permit for CHPE), New York League of Conservation Voters (three meetings between July and Dec. 2019) , Coalition of Northeastern Governors (CONEG), Natural Resources Defense Council, The Nature Conservancy, The Climate Group, North Country Chamber of Commerce (two meetings), Environmental Justice Alliance, Climate Week NYC, Carbon Forum NYC, and North Country Chamber of Commerce (which is quoted on Blackstone/TDI's press release of October 6, 2014 announcing that CHPE received the Presidential Permit and praising the “New York-Quebec economic relationship [as] an extremely diverse and important one” and CHPE as a way to get access to “plentiful, lower cost, renewable hydropower, which Quebec has and we need.” <https://www.blackstone.com/the-firm/press-releases/article/champlain-hudson-power-express-receives-presidential-permit> (Blackstone is the developer of the

Project, with TDI a “Blackstone portfolio company.” Blackstone’s investments include hedge funds. [www.blackstone.com](http://www.blackstone.com), last visited 5/17/2020)

- In November, 2019, the Government of Quebec hosted an invitation-only “Environmental NGO Roundtable” at the New York Quebec Consulate’s offices (see FARA Form, Item 11, Events), at which Serge Abergel, Director of External Media Relations at Hydro-Quebec, participated in providing information to the attendees about the benefits of Hydro-Quebec’s electricity to be transmitted over the CHPE corridor.
- On October 23, 2019, Hydro-Quebec and the Canadian Consulate sponsored and participated in a continuing education program entitled “Greening the grid, bringing Canadian renewables to NYC”, for which the invitation states, “Canada’s hydropower may play a critical role [in lowering NYC’s carbon]. The supply is massive, enough to dramatically increase clean energy imports into New York. The sector is mature, with an earlier potential timeline than emerging renewable sectors such as offshore wind. And hydropower is controllable, storable and flexible. **The proposed new transmission project, the Champlain Hudson Power Express, could help the city meet its clean energy needs by supplying Canadian hydropower directly to the city. Join Urban Green and the Consulate General of Canada for a Global Exchanges Event featuring expert panelists from New York and Hydro-Quebec to discuss this project and its potential to help NYC buildings comply with LL97.**” (emphasis supplied)

These are only some of the facts showing the direct and indirect support of Quebec and Hydro-Quebec for Project which extends over many years.

Further, Hydro-Quebec and/or representatives of the Applicant have had private meetings with New York City officials in an effort to promote CHPE and obtain public financing for it. <https://www.politico.com/states/new-york/city-hall/story/2019/10/24/new-york-city-may-finance-power-line-in-push-for-quebec-hydro-1225983> Hydro-Quebec itself owns subsidiaries operating in the U.S. including HQ Energy Marketing Inc. (HQEM) which holds shares in energy trading companies in the U.S. Form 18-K, p. 9. HQEM’s wholly owned subsidiary Hydro Renewable Energy, Inc. (HRE) participates in the development of new projects in the United States. Form 18-K, p. 9. Hydro-Quebec states, “We are continuing talks regarding participation in projects to build transmission lines between Quebec and certain states in the northeastern United States. These interconnections would enable us to increase our exports to these markets.” Form 18-K p. 12.

#### **4. The Applicants fail to list all contracts with Hydro-Quebec.**

Under 10 CFR 205.322(a) (5) the Applicants are required to list all existing contracts it has with any foreign government, or any foreign private concerns, relating to any purchase, sale or delivery of electric energy. They failed to adequately do so, stating it has no contract “... other



than an agreement with Hydro Renewable Energy, Inc. (HRE), a subsidiary of Hydro-Quebec. This agreement obligates TUHC to repay certain contributions made by HRE to support project development.” The Applicants should be required to provide specificity about this contract.

**5. Hudson Riverkeeper has withdrawn support for the Project casting uncertainty over every aspect of the Project, including the validity of PP-362 and inter-dependent PSC Order and US ACOE Section 404 Permit.**

On November 18, 2019, the Hudson Riverkeeper (Riverkeeper) an environmental group, withdrew its support for the Project. The Riverkeeper was a key party to the negotiated settlement that led to the DOE’s Record of Decision and Final Environmental Impact Statement (August 2014), and the NY PSC Order Granting Certificate of Environmental Compatibility and Public Need, issued prior to PP-362 on April 18, 2013. The PSC Order, FEIS and ROD incorporate Conditions from the Joint Proposal that formed the basis of the negotiated settlement of the controversy surrounding the Project.<sup>2</sup> These three regulatory approvals are a result of the negotiated settlement that led to the Joint Proposal. Without the participation of the Riverkeeper in implementing the Conditions of the PSC Order, FEIS and ROD, the Order and Conditions are invalid.

In its public statement withdrawing support for the project, the Riverkeeper described misinformation by Hydro-Quebec about the role of CHPE in forcing new dams, as well as changed regulatory and policy circumstances surrounding the Project. The statement says,

After careful consideration, research and consultation with affected community, environmental, government and corporate representatives, Riverkeeper is withdrawing its support of Transmission Developers, Inc.’s Champlain Hudson Power Express....Just as importantly, Riverkeeper has consistently stated that we would only support the CHPE project if it did not result in additional dam construction in Canada. In the six and one half years since our original decision not to oppose the permitting of CHPE, new risks have arisen that, if TDI does build this project and bring 1,000 MW of Canadian Hydropower to

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<sup>2</sup> FEIS, page S-9: The amended Presidential permit application submitted to DOE on February 28, 2012, reflected route and project changes that resulted from negotiations, including more than 50 settlement conferences held between November 2010 and February 2012, with state agencies and stakeholder organizations pursuant to the New York State Public Service Commission’s (NYSPSC) Article VII Certificate of Environmental Compatibility and Public Need process review of the project (Joint Proposal). The Applicant and 13 signatory parties submitted the Joint Proposal to the NYSPSC on February 24, 2012. The NYSPSC issued an Order granting a Certificate of Environmental Compatibility and Public Need (Certificate) for the proposed CHPE Project on April 18, 2013 (NYSPSC 2013). DOE is reviewing, and this EIS analyzes, the proposed CHPE Project as amended by the Joint Proposal and the Certificate. The Certificate is available on the CHPE EIS Web site (<http://www.chpexpreseis.org>).

New York, it would increase the likelihood that new Canadian dams would be constructed. This construction would cause significant adverse impacts to the flow, function and ecology of the rivers and northern boreal forests involved, which lie in an area where the amount of power produced per acre of flooded land is among the lowest in the world.”  
<https://www.riverkeeper.org/news-events/news/energy/riverkeeper-statement-regarding-the-champlain-hudson-power-express/> (last accessed 5/13/2020)

In fact, it is well documented that CHPE is directly responsible for the continued construction of dams in Eastern and Central Canada and plans for new dams. See, e.g. March 2020 report by NorthBridge Energy Partners (NorthBridge Report) available at:  
<http://northeastmegadamresistance.org/report-necec-and-chpe-transmission-corridors-tied-to-potential-for-more-dam-construction/>

The Riverkeeper has legal responsibilities under the PSC Order that are a *sin qua non* to the implementation of the Order (PSC Case No. 10-T-0139, dated February 24, 2012). These detailed Conditions of the Order, FEIS and ROD are contained in Article V and explicitly incorporated into the Certificate. ¶ 151. The Riverkeeper is assigned a governance role in administering the environmental mitigation trust fund established under the Order. The Conditions involving Riverkeeper include extensive environmental monitoring, mitigation and expenditure of funds from environmental trust fund that is established under the Order.

DOE cannot issue a new Presidential Permit to the Applicants without addressing the impact of Riverkeepers’ withdrawal from the Joint Proposal and the impact on the implementation of the Conditions established under the FEIS, ROD and PP-362. This requires a new permit application or at a minimum a supplemental environmental impact statement.

**6. The Applicants are seeking substantial and material changes to the PSC Order which are subject to public notice, hearing and comment.**

In September and December 2019, the Applicants filed two petitions to amend the PSC Order of 2013. On March 20, 2012, the PSC issued an *Order Granting, in Part Amendment of Certificate of Environmental Compatibility and Public Need Subject to Conditions*. Two of these amendments related to construction filings and plans and a third, which was not ruled upon, related to a request to amend Condition 11 of the Order to allow the Applicants to start construction prior to meeting three preconditions: (1) the filing by Trans-Energie of applications for approval with Canadian regulators to build the transmission facilities in Canada, (2) issuance of a Presidential Permit, and (3) issuance of the Army Corps of Engineers Section 404 permit under the Federal Clean Water Act and section 10 of the Rivers and Harbors Act. In filing for this application to amend Certificate Condition 11 of the Order, it appears the Applicants did not disclose the facts that it was filing with DOE to transfer PP-362 to a new entity or that the

original ACOE 404 permit expired at the end of 2019.<sup>3</sup> The PSC has not yet ruled on the Applicants' request to amend Certificate Condition.

Applicants' second petition to amend the Order seeks to make material and significant changes to the route of the Project cables and the location of the Project Converter Station. The PSC scheduled public information forums and public hearing statements before an Administrative Law Judge of the Department of Public Service on March 23, 2020. Due to the COVID-19 crisis, the public forums and hearings have been cancelled and no new date has been set.

Further, the Applicants are legally required to provide timely notice to all landowners along the route of the Project cables pursuant to the FEIS. See, FEIS Vol. 2, Appendix G, p. G-2:

The Applicant would provide timely information to adjacent property owners or tenants regarding the planned construction activities and schedule, and would coordinate with New York State Department of Transportation (NYSDOT), officials in counties traversed by the route, and local municipalities and police departments, as applicable, to develop and implement traffic-control measures that ensure safe and adequate traffic operations along roadways used by construction vehicles. Restoration of roadways would be designed in consultation with the appropriate jurisdictional agency. Any restoration on NYSDOT highway rights-of-way (ROWs) would be in strict compliance with the specifications of a NYSDOT highway work permit.

This must apply to changes to the ROW. It does not appear that the Applicants have given "timely information to adjacent property owners or tenants" regarding the revised ROW plans and the two petitions to amend the PSC order. Moreover, public comments on the plan to change the ROW challenge the authority of the Town of Putnam to grant the Project use of the municipal right of way and raise new and substantial environmental issues within the scope of NEPA that require a new or at least a supplemental EIS. See, e.g. comments of Lakeside Farm Properties, LLC, NY PSC Docket No. 10-T-1039 regarding Putnam Station Preferred Alternative Route. Further, there is no indication that the Applicants have complied with the condition of the Presidential Permit that require a qualified Agricultural Inspector to ensure that all aspects of the proposed CHPE Project that affect farmland either fully meet (comply with) or exceed the standards of New York State Department of Agriculture and Markets including the recommendations in the Pipeline Right-of-Way Construction Project guidance document, and proposed CHPE Project transmission system-specific permit conditions or orders of certification, relevant to agricultural resources." G-2.

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<sup>3</sup> The USACOE has issued extensions for the Section 404 Permit. Army Corps of Engineers Permit, NAN-2009-01089 was originally issued April 20, 2015 and expired in December, 2019. The Corps issued several extensions, most recently extending it to December 2025. It is unknown at this time whether the Corps provided proper public notice and comment for these extensions.

**7. The CHPE Project links New York consumers of Canadian hydropower to the cultural genocide of Indigenous communities near the dams and unacceptable environmental damage**

**a. The 2016 Harvard Study links Hydro-Quebec's new dams for export to methylmercury poisoning of the environment and wild foods relied upon by Indigenous people and others in remote communities**

Since the 1970s, Hydro-Quebec's hydropower production has been directly linked to methylmercury contamination of the environment and food supplies relied upon by people living in the sub-Arctic regions where Hydro-Quebec's dams are located. Flooding of forests and soils associated with hydropower dams and their reservoirs results in the production of the bioaccumulative neurotoxin methylmercury (MeHg). Enhanced releases of methylmercury (as well as the greenhouse gases carbon dioxide and methane) are sustained for one to three *decades* following the flooding of a hydropower reservoir. Methylmercury is a neurotoxin that bioaccumulates in food webs and adversely affects individuals who rely on local ecosystems for food. *Future Impacts of Hydroelectric Power Development on Methylmercury Exposures of Canadian Indigenous Communities*, Calder et al., Harvard H.T. School of Public Health, Env.Sci.Techol. 2016 (Harvard Study). [10.1021/acs.est.6b04447](https://doi.org/10.1021/acs.est.6b04447) It can take up to 35 years for methylmercury levels in Canadian reservoirs flooded for hydropower to return to baseline. *Report of the Joint Review Panel-Lower Churchill Hydroelectric Generation Project*, published under the authority of the Minister of Environment, Government of Canada, August, 2011, p. 88.

Traditional diets of indigenous people in the Arctic and subarctic are rich in fish, birds, seals and whale that provide many nutritional and cultural benefits. Harvard Study. The Harvard Study was the first effort to conduct a prospective analysis of risks to human health due to methylmercury exposure caused by hydropower expansion in Canada. It found that: (1) all 22 Canadian hydroelectric facilities being considered for near-term development are located within 100 km of indigenous communities, (2) for 11 sites across Canada, the mean exposure of indigenous people relying on wild foods to methylmercury is projected to exceed the U.S. EPA's reference dose, and **(3) of the 22 sites studied, Hydro-Quebec's Romaine 4 dam is projected to have the highest level of methylmercury exposure.** Harvard Study, Table S3. Hydro-Quebec's exports including the plans for CHPE are a contributing factor to Hydro-Quebec's current build out of the Romaine dam complex, begun in 2009 and scheduled for completion in 2021. Northbridge Report, supra. Were it to sign a contract for Canadian hydropower for the CHPE line, New York would be complicit in *causing more and new methylmercury poisoning of indigenous people and the environment in Canada* and continuing to sanction and support Hydro-Quebec's exploitation of rivers and people for hydropower profits.

The Canadian government is legally bound by the Minamata Convention on Mercury to reduce mercury emissions and to protect the environment and public health. Notably, the Convention recognizes "the particular vulnerabilities of Arctic ecosystems and Indigenous communities because of the biomagnification of mercury and contamination of traditional

foods and [is] concerned about indigenous communities more generally with respect to the effects of mercury.” <http://www.mercuryconvention.org/Convention/Text>, cited in *Submission to Special Rapporteur on Human Rights and Hazardous Substances and Toxic Wastes: Seeking to Prevent Further Harm if the Muskrat Falls Megadam Goes Online in 2019*.

The approach of the Quebec government and its agent Hydro-Quebec to the methylmercury poisoning issue is simply to state that people should not eat fish they, the government, based on outdated and incomplete tests of only one species, fish, has determined have high methylmercury levels. By telling people not to eat local foods for decades until the methylmercury levels (presumably) return to “baseline” levels, which until they are sampled, cannot be known to be safe, the Quebec government and Hydro-Quebec are telling indigenous people and others who rely on wild foods for survival to find food elsewhere.

Methylmercury poisoning of wild foods leaves indigenous people living near water bodies impacted by Hydro-Quebec’s hydropower use with the choice of not eating local wild foods or risking methylmercury poisoning. This one aspect of the cultural genocide of Indigenous people caused by Canadian hydropower development. Remarks of Marjorie Flowers, Inuit from Nunatsiavut, available on You Tube, <https://www.youtube.com/watch?v=LA7ErpI5W-4> See also, Muskrat Falls Government Inquiry, [www.muskratfallsinquiry.ca](http://www.muskratfallsinquiry.ca) <https://www.cbc.ca/news/canada/newfoundland-labrador/muskrat-environment-methylmercury-1.5030118>

Hydro-Quebec has done nothing to mitigate the releases of methylmercury by the hydropower dams and reservoirs it has been using since the 1970s to supply the Northeast U.S. with electricity. It has never conducted peer reviewed, complete scientific epidemiological studies. It relies on in-house employees to sample fish and devise safe consumption levels for indigenous communities. This ignores other sources of wild foods relied upon for survival, such as birds, seals and whale critical to food security and indigenous culture in remote areas where store-bought food is costly and lacks the same nutritional and cultural benefits. Hydro-Quebec’s “mercury agreements” with local communities are merely window-dressing and flimsy attempts to sweep public health and cultural concerns under the rug. The Quebec government, as noted above, is one and the same as Hydro-Quebec and hence the official government position is the position of Hydro-Quebec.

Since the 1970s, Hydro-Quebec has been using almost all the output of the massive 5,200 MW Churchill Falls dam in Labrador. Hydro-Quebec has “access to almost all of the output from the Churchill Falls generating station under a contract with Churchill Falls (Labrador) Corporation Limited that will remain in effect until 2014.” Form 18-K, p. 7. Labrador Inuit, Metis and Innu communities downstream of Churchill Falls are harmed by Hydro-Quebec’s use of the Churchill Falls dam. Nalcor Energy just completed the Muskrat Falls dam downstream from Churchill Falls. The Mean Inuit methylmercury exposure is forecasted to double following flooding of Muskrat Falls reservoir, which happened in Summer 2019. The Harvard Study concluded that over half of the women of childbearing age and young children are projected to exceed the U.S. EPA’s reference dose for methylmercury due to Muskrat Falls. Hydro-Quebec is

in discussions with Nalcor about buying hydropower from the Muskrat Falls dam for export. Northbridge Report, footnote 16. Nalcor is planning a third dam on the Churchill River, three times larger than Muskrat Falls at Gull Island for export and possible sale to Hydro-Quebec. Levels of methylmercury poisoning from Gull Island are projected to be almost twice the concentrations of Muskrat Falls, second to only Romaine 4, in the 22 dams studied by Harvard.

When Nalcor flooded the Muskrat Falls reservoir in Summer 2019, it completely ignored the methylmercury mitigation recommendations of Harvard University for the Nunatsiavut Government and the independent panel of experts. The Nunatsiavut Government expressed its concerns about the risk to its community from methylmercury poisoning due to the failure to follow the mitigation recommendations. <https://www.cbc.ca/news/canada/newfoundland-labrador/nunatsiavut-wetland-capping-deadline-1.5242775> **President Lampe said the “government has betrayed Indigenous people living downstream from the project who could be at risk from increased exposure.”**

#### **b. Hydro-Quebec’s hydropower operations unlawfully occupy and damage indigenous lands**

In addition to methylmercury poisoning of wild foods and the environment that causes cultural genocide, Hydro-Quebec’s operations have unlawfully flooded and occupied indigenous lands since the 1970s, depriving indigenous people of their land and traditional culture and livelihoods.

Twenty-nine percent of the electricity that Hydro-Quebec is attempting to sell to New York originates from indigenous Innu Pessamit territory and is therefore owned by the Pessamit. <https://www.concordmonitor.com/Pessamit-Innu-say-Hydro-Quebec-can-no-longer-hide-the-facts-11991318> The Innus of Pessamit have a \$500 million lawsuit pending against Hydro-Quebec seeking compensation for their lands. The Innus of Uashat mak Mani-Uteman have a lawsuit seeking judicial recognition of their aboriginal rights and title to lands where Hydro-Quebec’s dams are located, and \$1.5 billion in damages from Hydro-Quebec. Form 18-K, p. 25.

Hydro-Quebec is linked to cultural genocide caused by displacement of Indigenous people in Labrador as well. The Churchill Falls dam which Hydro-Quebec has used since the 1970s and the Smallwood Reservoir for the dam (covering 2,520 square miles) were built without input Innu or agreement from the aboriginal community. There is no record that aboriginal people were notified before over 1,900 square miles of their traditional hunting and trapping lands were flooded for the Churchill Falls dam and reservoir.

This is the legacy of cultural genocide of indigenous people and environmental destruction behind the Blackstone/TDI/Applicants effort to greenwash the CHPE corridor as clean energy. The public interest in the DOE decision whether to transfer PP-362 to a new entity for the convenience of Blackstone’s hedge funds and private equity portfolios demands



full transparency about the social, economic and environmental destruction caused by the Hydro-Quebec power and new dams in Eastern Canada being built to supply New York City with imported energy from the Quebec government.

**8. Applicants violated the PP-362 by failing to provide DOE with written notice of prospective or actual substantive changes in the circumstances upon which the PP-362 was based.**

Article 13 of PP-362 imposed on the Applicants a “continuing obligation to give DOE written notification as soon as practicable of any prospective or actual changes of a substantive nature in the circumstances upon which this Order was based...” Each of the issues identified above in these comments is a “prospective or actual change in the substantive nature in the circumstances” upon which PP-362 was issued. From publicly available documents, it does not appear the Applicants have informed the DOE of these prospective or actual changes. Instead, Applicants are attempting to segment the regulatory approval process by filing an ever changing and shifting set of requests for extensions and amendments with various regulators to previously granted permits, apparently without informing the regulators of these co-dependent permits and approvals about the changes being sought. This in itself is a violation of the spirit and intent of the Presidential Permit and displays a disregard for the public interest and transparency and full and fair consideration of the impacts of this \$3 billion project.

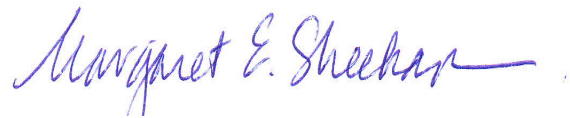
In summary, DOE cannot issue a new Presidential Permit without addressing each of the issues raised here. Federal regulation 10 CFR Section 205 requires the Applicants to file a new and completed application for a Presidential Permit and a new or supplemental EIS.

Thank you for the opportunity to submit comments.

Very truly yours,

A handwritten signature in black ink that reads "Roger Downs". The signature is written in a cursive, flowing style.

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