



**BRIEF PRESENTED TO THE COMMITTEE ON AGRICULTURE, FISHERIES,
ENERGY AND NATURAL RESOURCES**

March 14, 2023

Bill 13 – *Law respecting the Hertel-New York Interconnection Line*

INTRODUCTION

On behalf of the Mohawk Council of Kahnawà:ke (MCK), I would like to thank the Committee on Agriculture, Fisheries, Energy and Natural Resources for this opportunity to present the MCK's views on *Bill 13 – Law respecting the Hertel-New York Interconnection Line*.

The MCK is the duly elected governing body of the Mohawks of Kahnawà:ke. The Mohawks of Kahnawà:ke are an Indigenous community located on the south shore of Montreal, comprised of approximately 8,000 residents.

I am Ohén:ton Í:iete ne Ratitsénhaienhs (Grand Chief) Kahsennénhawe Sky-Deer of the Mohawk Council of Kahnawà:ke. I am accompanied by Me Eric Doucet, Legal Counsel for the MCK, who has been one of our key technicians working on this strategic partnership with Hydro-Quebec.

DISCUSSIONS WITH HYDRO-QUEBEC

In 2018, our late Grand Chief, Joseph Tokwiro Norton, had expressed to Hydro-Quebec that going forward Kahnawà:ke's support for future projects within our historical land base hinged on equitable partnerships with Kahnawà:ke. When I became Grand Chief, I carried a mandate from my Council to hold strong to this position when approached by Hydro-Quebec to support its bid to supply electricity to the State of New York.

We were told that if successful in its bid to New York, Hydro-Quebec would need to construct a 58-km transmission line within Kahnawà:ke's historical land base, including what is known as the Seigneurie-of-Sault-Saint-Louis. In a Memorandum of Understanding signed in May 2021, the MCK agreed to publicly support Hydro-Quebec's bid to supply New York with electricity on the condition that it would be made a joint owner of the Hertel Line if Hydro-Quebec was successful in its bid. In September 2021, New York Governor Kathy Hochul announced that Hydro-Quebec was selected as the primary supplier of electricity for New York City.

Bill 13 is in and of itself historic. This partnership represents not only the first time that Hydro-Quebec will share its transmission infrastructure with a third party, more importantly, it is doing so with an Indigenous community. Bill 13 will allow Hydro-Quebec to sign the historic partnership agreements with the MCK, effectively initiating the transformation of Hydro-Quebec's relations with Indigenous Peoples from one that circumvented our rights to one that is more respectful, progressive and innovative.

HISTORY OF MOHAWK RIGHTS OVER THE HERTEL LINE PROJECT FOOTPRINT

The land interests of the Mohawks of Kahnawà:ke are complex. Our current reserve land base is only a very small part of our historical territory. In addition to our current reserve, we also hold interests in our traditional territories and well as in the Seigneurie-of-Sault-Saint-Louis.

Traditional Mohawk territory includes lands in present day Quebec and New York State, overlapping with the vast majority of the project footprint. This includes the Hertel substation, the entire 58-km Hertel Line, and the majority of the Champlain Hudson Power Express project footprint in the State of New York, including Lake Champlain. Since time immemorial, these lands

and bodies of water formed part of our Mohawk historical territory and traditional hunting and fishing grounds.

The Seigneurie-of-Sault-Saint-Louis, spanning what is known today as Chateauguay through to La Prairie, was a concession by Louis XIV, King of France, made by letters patent to the Fathers of the Society of Jesus for the sole benefit of the “Iroquois of the Sault” (as the ancestors of the Mohawks of Kahnawà:ke were known at the time). Over time, our unceded lands were illegally sold off to non-Indigenous settlers, eroding Kahnawà:ke’s land base. The Seigneurie-of-Sault-Saint-Louis lands that were illegally ceded are Mohawk territory and are currently subject to a land grievance that has been accepted for negotiation by the Government of Canada.

RECONCILIATION

We have suffered numerous impacts to our land base over the years, including the dispossession of our historical territory, Seigneurie-of-Sault-Saint-Louis lands, and unilateral imposition of the *Indian Act*. Attracted by Kahnawà:ke’s proximity to Montreal, major infrastructure projects were disproportionately imposed on Kahnawà:ke’s ever-shrinking land base. The *Indian Act* made it easy to expropriate our reserve lands if the public purpose justified the taking.

Over the past two centuries, Kahnawà:ke’s landscape has been shredded through with impositions of a major highway, two (2) major roadways, the St. Lawrence seaway, a major road bridge, a railway bridge, two (2) railway lines, and four (4) hydroelectric transmission lines. Up until now, these third-party land takings and development projects were for the sole benefit non-Indigenous peoples and corporations. Canadian jurisprudence now recognizes that advancing reconciliation with Indigenous peoples is required and must be a top priority.

The Honour of the Crown and achieving reconciliation between Indigenous peoples and the government are now fundamental principles of Aboriginal law that are protected by the *Constitution Act, 1982*. Flowing from this, the Crown has a duty to consult and accommodate Indigenous Peoples whenever there is government action that has a potential adverse effect on Aboriginal rights (including Aboriginal title, rights and treaty rights). The duty to consult framework was established as a mechanism for the recognition of Aboriginal rights pending the conclusion of modern treaties and agreements. While this duty is owed by the Crown, proponents including State-owned corporations like Hydro-Quebec, will often initiate separate consultation processes to ensure that Indigenous peoples have been adequately consulted and accommodated.

KAHNAWÀ:KE’S RENEWED RELATIONSHIP WITH HYDRO-QUEBEC

It is in this spirit that Hydro-Quebec initiated the consultation process on the Hertel Line with the MCK. Given the potential impact to Kahnawà:ke’s rights, the parties negotiated an accommodation measure that would render the MCK joint owners of the Hertel Line, as well as other concessions I will illustrate.

Admittedly, Kahnawà:ke’s relationship with Hydro-Quebec has not always been an easy one. Prior to and following the nationalization of Hydro-Quebec in the 1940s, four transmission lines were constructed on Kahnawà:ke lands between the 1910s and the 1970s. This does not begin to include the countless hydroelectricity production infrastructure, transmission lines and utility

infrastructure constructed on the Seigneurie-Sault-Saint-Louis lands for which no compensation has ever received.

In the past two decades, Hydro-Quebec has made a concerted effort to negotiate fair and reasonable accommodation measures for the ongoing use of Kahnawà:ke lands. By way of example, Hydro-Quebec has removed three of its transmission lines in Kahnawà:ke. It is currently returning all unused lands to its original state. Hydro-Quebec has also agreed to pay fair and equitable compensation for its continued use of our lands. And of course, Hydro-Quebec has invited the MCK to participate in the joint ownership of the Hertel Line. These are the hallmarks of a renewed relationship demonstrating to Kahnawà:ke that Hydro-Quebec is dedicated to being a good corporate citizen moving forward.

The joint ownership of the Hertel Line will provide the MCK with a financial stake in the infrastructure located on its lands. The MCK will receive revenues from its ownership stake. Aside from the purely monetary benefits of the Hertel Line, Kahnawà:ke will benefit from the following:

- The MCK will be represented at the board level in the corporate entity that will own the Hertel Line proportional to its minority equity interest in the project;
- Hydro-Quebec will look to provide contract opportunities to Kahnawà:ke workers during the construction phase.;
- The MCK has already participated in a land use study, which details how we exploit our traditional rights on the affected lands;
- The MCK will have input in the environmental assessments;
- The MCK will have input in archaeological surveys, studies and excavations; and,
- The MCK will have an archaeologist or archaeological technician onsite to ensure any archeological interests are flagged and considered during the construction phase.

KAHNAWÀ:KE'S SUPPORT FOR CLEAN ENERGY PROJECTS

When considering the impact of projects, the Mohawks of Kahnawà:ke base decision-making on respect for all parts of the natural world. In our language, Ohén:ton Karihwatéhkwén means "the words that come before all else." It is the opening address at gatherings, schools, ceremonies and the beginning and end of each day, to remind us of the important responsibility we all share to ensure that the cycles of life continue and to remind us that all of Creation is sacred and interconnected. We acknowledge that every part of the natural world has importance, not only for the benefits they provide for human survival, but also for the role they play within the web of life.

In all decision-making, we also consider the principle of considering Seven Generations. Any decisions taken today must consider the impact of the selected actions on the next seven generations. By anticipating the consequences of our actions, seven generations into the future, we ensure that our actions reflect our responsibility to maintain the cycles of life.

The MCK has a dedicated consultation committee composed of environmental experts, archaeological experts, and assisted by lawyers to review projects that will potentially impact Mohawk rights. This committee ensures that the appropriate measures are taken to avoid, mitigate and accommodate negative environmental impacts stemming from development projects. Through this work, the MCK has been a major player in promoting clean energy projects, which align with

its values. Addressing the challenges posed by climate change and the loss biodiversity and natural areas are among our top priorities. If a project does not align with Kahnawà:ke's environmental stewardship rights and responsibilities, the MCK will not support the project.

With respect to the Hertel Line, the MCK consultation committee has been directly implicated in the environmental and archaeological review process every step of the way. Given that the Hertel Line will be buried and use existing rights of way, the impact to the environment will be minimized. We are confident that impacts identified by the MCK consultation committee will be adequately addressed and accommodated by Hydro-Quebec.

KAHNAWÀ:KE'S TIES TO NEW YORK CITY

The MCK is also delighted to be able to contribute to New York's largest renewable energy and transmission project in 50 years. The Champlain Hudson Power Express line will connect with the New York City power grid in Astoria, which will replace and reduce reliance on much of the energy currently produced by fossil fuel powered plants in the area.

Kahnawà:ke has deep historical ties with the City of New York. Our ties are so strong, they are evidenced by the presence of a Kahnawà:ke neighborhood in Brooklyn known as "Little Caughnawaga". During the past century, Mohawk ironworkers cultivated a renowned skill for working high-steel, playing an integral role in the building of New York City's infamous skyline and surrounding infrastructure. Travelling back and forth between Kahnawà:ke and New York for work is a tradition that many Kahnawà:ke men continue to this day. After contributing such a critical role in building New York City's skyline, Kahnawà:ke is proud to also be able to breath new life into this unique relationship with the City of New York by transmitting clean energy that will be used to illuminate New York's historic landmarks.

We wish to allay any doubts about the important role that Kahnawà:ke has played in getting this project over the line. The First Deputy Mayor of New York confirmed with both me and Hydro-Quebec delegation during a visit to New York, that without the support of the MCK, Hydro-Quebec would not have been selected to supply New York with electricity. This demonstrates that partnerships like the one between Hydro-Quebec and the Mohawks of Kahnawà:ke can be key in meaningfully considering Indigenous communities and interests. Establishing agreements that make sense for both Indigenous and business interests alike. We hope that this partnership with Hydro-Quebec is a steppingstone to continued progress in its relations with Kahnawà:ke, and with other Indigenous communities.

CONCLUSION

Bill 13 is necessary for Hydro-Quebec to formalize its partnership with the MCK. Through this partnership, MCK is helping support the Quebec economy, which relies on Hydro-Quebec as its Crown jewel to drive economic prosperity in an environmentally sustainable manner.

In the long term, we hope that this partnership will usher in a new era of cooperation and economic inclusion for all Indigenous communities located within the boundaries of the Province of Quebec.