Government of Newfoundland and Labrador
Submission to the joint review panel assessing the Romaine Complex Hydroelectric Project
November 27, 2008

The Government of Newfoundland and Labrador is pleased to have this opportunity to participate in the environmental assessment of the Romaine Complex Hydroelectric Project. The project is a large and important one, situated very close to Newfoundland and Labrador. In general, Newfoundland and Labrador would support the development of the project so long as: the environmental assessment demonstrates that the adverse environmental effects of the project can be mitigated and that residual effects can be effectively monitored and managed; the federal and Québec ministers develop terms and conditions to ensure that such mitigation, management and monitoring measures take place; and the concerns of the Province of Newfoundland and Labrador raised in this submission are addressed. However, as it stands the Province has some significant concerns that it would urge the joint review panel to address in its report. We believe that these concerns must be addressed prior release of the project from environmental assessment. These concerns surround not only the adequacy of the Environmental Impact Statement (EIS) and related component studies and statements by Hydro-Québec, but the environmental assessment process as it has unfolded to date.

The development of Canada's hydroelectric potential is critical for the success of both Newfoundland and Labrador and Québec as well as for Canada as a whole and North America more broadly. Hydroelectric power generation uses proven technology, emits essentially no greenhouse gasses; is not dangerous and creates no long-term toxic waste; and is abundant and reliable. Though the capital costs of developing hydroelectric power generation on a large scale are considerable, once in place generation is completely renewable and the operations and maintenance costs are relatively low. Large-scale hydro projects provide clean, inexpensive power forever. As we look into the future, Canada and the United States both project an increased demand for electricity and, if our economies are to remain competitive in the global economy, the costs of providing that energy must be contained. Meanwhile, we are also growing concerned about climate change and the effect that power generation from oil, natural gas and coal are having upon our environment. Newfoundland and Labrador has identified these two issues as central components of *Focusing Our Energy,* our energy plan released in 2007, as must every jurisdiction in North America. The Council of the Federation's 2007 energy strategy, a *Shared Vision for Energy in Canada*, identified hydroelectric power as first on the list of resources that provinces and territories must develop to provide "critically needed electricity for domestic use and export". It was interesting to note that the Speech from the Throne delivered by the Governor General on November 19, 2008 included a commitment by the federal government to a goal of having 90 percent of Canadian electricity needs met by non-emitting sources by 2020. As approximately one quarter of electricity generation in Canada presently uses natural gas, oil or coal as fuel, this target appears very ambitious. Developing Canada's unused hydroelectric potential must be a central part of this effort.

To these ends, the development of the Lower Churchill Hydroelectric Project in Labrador is a central priority for Newfoundland and Labrador and we believe that it should be a priority for Canada as well. The Lower Churchill Project is the most attractive undeveloped hydroelectric project in North America. Once operational, it will have a 2,800 MW capacity and provide 16.7 Terawatt hours (TWh) of clean, renewable electricity per year, enough to power 1.5 million households, without a requirement for significant reservoir flooding. The Lower Churchill Project will not only have a small

ecological footprint, but has the potential to make an enormous contribution to the effort to reduce greenhouse gas (GHG) emissions. If it displaces or avoids oil-fired generation, it could displace up to 13 million tonnes of GHG emissions every year. That figure rises to 16 million tonnes if it avoids or displaces coal generation. The full development of the hydroelectric power of the Churchill River, including the existing Churchill Falls facility and the Lower Churchill project, would be the clean equivalent of 225,000 barrels of oil a day forever and the equivalent of taking 3 million cars off the road.

While the Lower Churchill Project is the largest planned hydroelectric project in North America, the need is great and the development of the hydroelectric potential of the Romaine river would also make an important contribution. However, Newfoundland and Labrador has a number of concerns that must be addressed prior to initiating the Romaine project. We believe that the EIS submitted by Hydro-Québec is unacceptably deficient in a number of key areas. We have concerns about the potential adverse environmental effects in Labrador and that these do not appear to have been examined. We are further dismayed that Newfoundland and Labrador was not consulted by Hydro-Québec, the Government of Québec or the Canadian Environmental Assessment Agency (CEAA) and, even though we have raised concerns about the draft Environmental Impact Statement (EIS) beginning in February 2008, little effort has been made to answer questions that the Province has had about the project. The remainder of this submission highlights these three categories of concerns.

MAPPING

In the maps associated with the EIS released for public review on January 24, 2008, the terrestrial boundary between Québec and Newfoundland and Labrador is invalidly depicted. In the proponent's maps the constitutionally accurate boundary is represented by a faint dashed line marked "indefinitif" and an inaccurate boundary is drawn well to the north, apparently at the height of land, with the effect that the headwaters and entire watersheds of the Romaine and the four other major Québec North Shore rivers appear, incorrectly, to be within Québec.

The interprovincial boundary between the two provinces was authoritatively confirmed by a ruling of the Judicial Committee of the Privy Council in 1927. It is found in Term 2 of the Terms of Union of Newfoundland with Canada and forms part of the Constitution of Canada. Term 2 states "The Province of Newfoundland and Labrador shall comprise the same territory as at the date of Union, that is to say, the island of Newfoundland and the islands adjacent thereto, the Coast of Labrador as delimited in the report delivered by the Judicial Committee of His Majesty's Privy Council on the first day of March, 1927, and approved by His Majesty in His Privy Council on the twenty-second day of March, 1927, and the islands adjacent to the said Coast of Labrador". The accurate interprovincial boundary is in no way "indefinitif". Québec's own Dorion Commission found, in 1971, that Québec had no recourse to challenge this boundary.

This EIS is a document that the federal government must assess as sufficient. It is unacceptable that the federal government would accept a document as sufficient with such a glaring error of fact and law, especially one which is inconsistent with the Constitution of Canada. The depiction of the interprovincial boundary communicates information about what lands and resources belong to, and are under the jurisdiction of, respectively, the governments of Québec and Newfoundland and Labrador. Particularly as the Romaine catchment area overlaps the interprovincial boundary and the project will have environmental effects in the boundary area, the

question is of material importance to the environmental assessment of this project. There is real potential for inadequate assessment of the biophysical impact on Newfoundland and Labrador as the result of an inaccurate depiction of the Province of Newfoundland and Labrador. This matter must be rectified.

The terrestrial boundary is not the only mapping error in the EIS. An interprovincial maritime boundary is drawn in the Strait of Belle Isle and the Gulf of St. Lawrence between Québec and Newfoundland and Labrador. No such maritime boundary exists between Newfoundland and Labrador and Québec. The maritime boundary between Newfoundland and Labrador and Québec remains to be agreed upon as it has never been established.

In conformity with the Constitution of Canada, the EIS maps must be replaced with accurate maps which contain the interprovincial boundary authoritatively established by law. The maritime boundary depicted is non-existent and should be removed.

STUDY ZONE AND METHODOLOGY

One of the most noticeable deficiencies in the EIS is in the study areas selected. In section 4.1, the Natural Environment study area chosen was defined as "The study area stretches from the mouth of the Romaine River to the Labrador border, based on the privy Council's 1927 alignment (not absolute), encompassing a 295 – km stretch of the river. It is one to five kilometers wide on either side of the planned reservoirs and the remaining stretches of the Romaine River. The study area is sometimes broadened to include the mouths of the main tributaries or the routes of the romaine river to be assessed (see map 4-2)." The study area for the Social Environment also ends north at the same boundary and no justification is provided. This passage appears to present two explanations for the determination of the study area, a methodology that describes a strip of territory surrounding the planned reservoirs and a decision to limit the study area to Québec. We have problems with both of these explanations.

Newfoundland and Labrador cannot understand the justification for limiting the study area to Québec when there may well be adverse environmental effects in Newfoundland and Labrador, as discussed in greater detail below. Potential adverse environmental effects in Newfoundland and Labrador are just as relevant for consideration as any that may occur within Québec and must be thoroughly examined during the environmental assessment process. The limitation of the study area appears to be an arbitrary decision.

The proponent should have developed study areas for each Valued Ecosystem Component separately and comprehensively. There is some variation in study areas; for example, the study area for caribou includes transmission corridors (see section 47.2.6.1). However, in no instance do the study areas cross the constitutionally accurate interprovincial boundary when, in many instances, they should. As discussed below, the study area for at least large mammals, fish, fur bearers and birds should extend into Labrador as does the habitat of these animals. Depending on hydrological monitoring, the overall study area should extend into Labrador.

In an October 16, 2008 letter to the acting Deputy Minister of Environment and Conservation, the President of CEAA committed to "address potential transboundary effects associated with the proposed project, including any deficiencies in the work undertaken by Hydro-Québec, as an environmental impact statement quality issue. Consistent with that approach, I advised that we were requesting further information on transboundary effects from Hydro-Québec

based on issues raised by Aboriginal groups in the Province of Québec". The Province is encouraged by this commitment and, while concerned that we have yet to receive any coherent response to any of the questions that we have raised about the project, we trust that CEAA will meet its commitment and the proponent's responses will inform the Minister's decisions.

CARIBOU

Hydro-Québec documents state that caribou are mostly in the northern part of the study area. This agrees with Newfoundland and Labrador's understanding of distribution that, south of approximately 51 degrees N, caribou are very scarce. Collared Lac Joseph caribou have ranged as far south as 51 15 N but these caribou are normally boundary and near-boundary residents. Caribou south of those areas, while scarce, do exist and are remnants of a once much more numerous population that existed south to the north shore. The status quo of caribou on the Romaine and in related areas represents a population of caribou that has been severely reduced the nearer to the North Shore one gets. For this reason Québec North Shore residents often travel north to the area of the interprovincial boundary and even into Labrador to kill caribou. Hunting woodland caribou in Labrador is illegal as it is a species listed as threatened. Natural Resources Conservation Officers observe illegal caribou hunting in Labrador each year and this practice is not decreasing.

This project is potentially a negative one for caribou as it will exert further negative pressure on remaining animals well north of the coast. The proposed roads associated with the project will increase access to areas inhabited by protected woodland caribou. The reservoirs themselves may also increase access by water and, in the winter, by snowmobile. Linear transmission corridors will increase access for hunters as well as for predators. In common with most of the rest of the North American woodland caribou range, caribou of the Québec North Shore and Labrador are, in most cases, declining or at best stable. Newfoundland and Labrador maintains its strong commitment to the protection and conservation of woodland caribou in Labrador. We feel that this development would lead to increased hunting pressure on protected woodland caribou and thus a negative impact on the current population.

More in-depth study of caribou over a greater study area extending into Labrador should be conducted, including hunting practices, loss of habitat, pressure from increased predation and barriers to migration. Newfoundland and Labrador feels that a strong public awareness and outreach program on the importance of caribou conservation to allow caribou recovery must be a condition of the project's release from environmental assessment. All Québec North Shore residents must buy in to the principles of caribou recovery. Expectations about huntable populations have to be depressed as the reality is that caribou, in ecosystems that have moose, wolves and modern humans, need every help in order to maintain populations. A culture shift is needed such that the existence of sustainable caribou numbers and recovery to the coast is the long term goal. It is also essential that the Government of Québec enhance enforcement mechanisms.

WATER

The Government Newfoundland and Labrador does not have confidence that there will not be flooding in Labrador during flash flood events. We strongly recommend that the proponent carry out a detailed analysis using Boss HEC-2 model or other backwater analysis model to assess the effects of flash flood events following the construction of dam/reservoir at Centrale La Romaine-4. Such analysis should be used to determine the extent of flood levels and areas and impacts on

water resources especially in Labrador lands. The analysis should be based on 10,000 years return period. In addition, anticipated impacts on ambient water quality as a result of such events should be analyzed and presented. The EIS contains no information to indicate that such an analysis was conducted.

If such analysis determines that there is a risk of flash flooding in Labrador, greater analysis will have to be given to adverse environmental effects of such flooding as, due to the limitation of the study area, no such attention has been given.

There are seven remote cottage titles issued in Labrador adjacent to the boundary. If these cottage titles, or accessibility to them, would be affected by flash flooding, these effects should be clearly detailed. A map identifying these titles is attached in an Annex as Figure 1.

The potential for flooding to affect potential archaeological sites should also be detailed. Romaine River was a well documented Innu travel route into the interior of Labrador. It was also used to get to the north coast of Labrador – these are well known Innu land use facts. While there are no known archaeological sites in Labrador in this area, there are known Innu sites just across the boundary in Québec at Lac Banane and Lac Theta and there is archaeological potential on the east side of the river in Labrador. A map highlighting known archaeological sites is attached in an Annex as Figure 2.

Hydro-Québec acknowledges in the EIS that methyl mercury contamination in fish species will occur as a result of increased mercury levels in the proposed Romaine Reservoir No.4 system. These fish may migrate into Newfoundland and Labrador waters at which point they may be consumed by people or fish. The proponent should detail the potential impact on fish, other wildlife and people of this contamination in Newfoundland and Labrador.

Finally, the Province wishes to take the opportunity to re-affirm its water rights in the portion of the Romaine River watershed on Newfoundland and Labrador lands. The Government of Newfoundland and Labrador and its Minister responsible for water resources, without compensation to the proponent, shall not be restricted to:

- use water of Romaine River watershed on, in, under, or flowing through or adjacent to the Newfoundland and Labrador – Québec boundary on Labrador lands for purposes related to management, research, protection and conservation of water resources, aquatic life and aquatic habitat;
- establish standards and measures for the protection of water resources on, in, under, or flowing through or adjacent to the Newfoundland and Labrador – Québec boundary on Labrador lands;
- use water or authorize the use of water on, in, under, or flowing through or adjacent to the Newfoundland and Labrador – Québec boundary on Labrador lands for the purpose of fighting fires;
- establish flood control measures, develop flood plain management strategies and designate flood risk zones with respect to water resources flowing on, in, through, under or adjacent to the Newfoundland and Labrador – Québec boundary on Labrador lands;
- carry out or authorize hydrologic data collection and hydrologic research with respect to water resources on, in, under, or flowing through or adjacent to the Newfoundland and Labrador – Québec boundary on Labrador lands; and

- use water or authorize the use of water on, in, under, or flowing through or adjacent to the Newfoundland and Labrador – Québec boundary on Labrador lands for any other beneficial purpose that is in the Government's interest and the other residents of Labrador.

CONCLUSIONS

It is clear that there is the potential for adverse environmental effects in Newfoundland and Labrador that have not been adequately addressed at this point. The Government of Newfoundland and Labrador believes that the project will have negative effects on caribou herds in Labrador. Further environmental effects due to possible flash flood events can not be assessed because there is no indication that any analysis has been carried out regarding the likelihood of these events. Finally, the EIS and related documents contain glaring errors of fact that are contemptuous of the Constitution of Canada.

As a final note, the Government of Newfoundland and Labrador is deeply concerned that it has not been formally consulted during the environmental assessment of this project, given the proximity of the project to the interprovincial boundary and the possibility of adverse environmental effects in Labrador described above. Moreover, little has been done to facilitate Newfoundland and Labrador's participation once our concerns about the project were highlighted. The proponent explicitly refused to meet with Newfoundland and Labrador officials and CEAA refused to require this meeting. CEAA did not provide any translation assistance with the EIS and, though CEAA officials advised that a summary document in English would be available in the fall of 2008, no such document has been made available. Newfoundland and Labrador has submitted questions about the project on three occasions, to CEAA on August 22; to the Bureau d'audiences publiques sur l'environnement on October 17 and to the first stage of the joint review panel hearings on November 10. Only in the last instance were questions referred to the proponent for response; however, no response has been forthcoming to facilitate more fulsome participation of the Province in the second stage of the submission. It may be the case that some of the questions raised in this submission are addressed in sectoral studies conducted by Hydro-Québec, all of which are in French. As the proponent has made no efforts to answer the questions that have been repeatedly posed by the Government of Newfoundland and Labrador, it can only be reasonably assumed that no such answers exist.

While the Romaine project, and all of Canada's untapped hydroelectric potential, is crucial to Canada's sustainable economic development, Newfoundland and Labrador maintains that the project should not proceed without rectification of the identified deficiencies.

ANNEX

Figure 1: Title Claims Adjacent to the Romaine Watershed

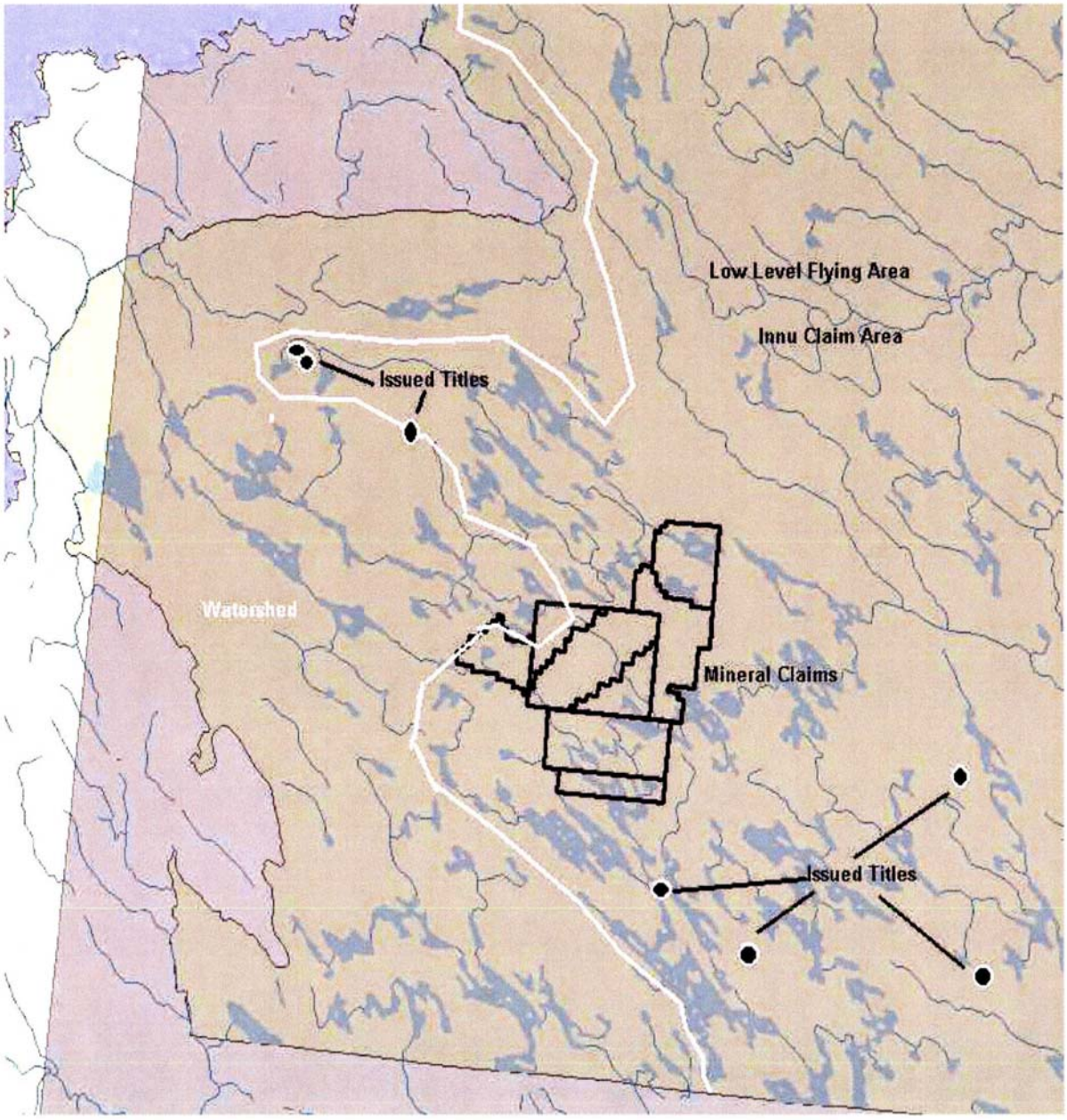

Figure 2: Known Archaeological Sites in the vicinity of the Romaine Watershed


Mitshuap 2
Shashish
Sheffield
Wilson
Wilson
Wilson Lake 5
Mitshuap 1
Cutting
Teueikan
Knife
Box
Lake 2
Lake 4
Wilson Lake 1
Loc. 6
Minishtukut
Oneida
Trap 3
Wilson
Wilson
Blue Cabin 1
Blue Cabin 2
Sandy Beach 3
Uitshinanuishapan 2
Winokapau
Lake 7
Lake 3
Sandy Beach 1
Sandy
Beach 2
Exploration
Cache
Cutting Loc. 5
Post
Gun Shell 1
Car Kutukuniu-tshuapish
River
Wolf
Wolf
Fox 2
Bridge 2
Tshimikaikanishapani
mak
Site 1
Site 3
Island
Kuakupakanissik
Utikuna
Camp 1
Katshapishtesht
Shoal
Ushkata
River
Cache
River 1
Katipashuatshanut
Unakan
Nishtu
Pitshuantshuapa
Peik Tshimikaishkan
Tshimikauakanishapant
mak Tassipunakanishapant
Flint
Lock
Lac
Banane
Lac
Theta