

POSITION PAPER PRESENTED
BY
THE MI'GMAWEI MAWIOMI
TO
THE BUREAU D'AUDIENCES PUBLIQUES SUR
L'ENVIRONNEMENT ON THE PROPOSED TRANSMISSION LINE
TO THE CARLETON SUR-MER WIND PARK

Through this position paper, the Mi'gmaq Nation hopes to communicate its opinions, its preoccupations, its interests as well as its recommendations on the proposed transmission line project.

Before addressing the subjects mentioned above, we would like to present the Mi'gmawei Mawiomi to you. In August 2000, the elected councils of the Gespeg, Gesgapegiag and Listuguj communities signed a political agreement which led to the formation of the Mi'gmawei Mawiomi, whose primary mandate is to defend the rights and interests of the Mi'gmaq Nation. By strengthening the link between its three communities, the Mi'gmawei Mawiomi promotes economic and social development in Gespe'gewa'gi (our traditional land) and allows the communities to express their claims with one voice. We have adopted

the traditional principle of "One people, One vision." For that reason, we speak with one voice.

As we have on previous occasions, we would now like to reiterate that the Mi'gmaq Nation never ceded its title or rights on the Gespe'gewa'gi traditional land, which includes the entire Gaspé peninsula and the adjacent waters and islands. The Gespe'gewa'gi also extends over a large part of New Brunswick.

Regarding our rights to the land, we would like to point out that it is important to make a distinction between the peace and friendship treaties that our nation signed with the Crown at the end of the 18th century and the numbered treaties signed by the Aboriginal Nations in western Canada. As opposed to the numbered treaties, our peace and friendship treaties were in no way an assignment of our rights and title to the land, but instead were an attempt to deal with specific aspects of our nation-to-nation relationship with the Crown. Consequently, the legal situation of the Mi'gmaq Nation on the Gespe'gewa'gi land is similar to the situation of the Cree Nation in Quebec at the time of the negotiation of the Bay James Convention and that of the Aboriginal Nations in British Columbia. However, what we are focusing on today

is the different wind power development projects occurring on our land and specifically the Carleton Sur-Mer project.

Because the work of this commission is directly related to development activity on our land, we must inform the commission that the three Mi'gmawei Mawiomi chiefs are pursuing a Mi'gmaq claim on the entire Gespe'gewa'gi territory within the geographic boundaries of Quebec.

In this sense, our primary goal is to have our inalienable ancestral rights respected as well as our right to self-government and self-determination on Gespe'gewa'gi land, out of respect of our status as a Nation and, for the well-being of our families, our youth and our elders for the next seven generations.

Within the scope of the protection of our rights, a joint proclamation of consultation and accommodation was agreed upon by the eight elected Chiefs in the 7th Mi'gmaq district, and ratified by the Grand Chief of the Nation, Ben Sylliboy.

This joint proclamation reiterates the legal concepts of our Nation's aboriginal title that our Nation has on the land, the treaties signed by the Mi'gmaqs as a Nation, as well as the constitutional recognition of

our rights, confirmed repeatedly by the Supreme Court of Canada. More precisely, this proclamation, entitled "JOINT PROCLAMATION ON THE DUTY TO CONSULT AND ACCOMODATE THE MI'GMAQ FOR THE GESPE 'GEWA 'GIGEWEL SAQAMAWUTI," establishes the guiding principles for an adequate consultation with our Nation for making agreements establishing satisfactory solutions for the respective parties.

In its report on energy, "***L'énergie au service du Québec, une perspective de développement durable***", the Quebec government said it hoped to establish a collaboration with the Aboriginal peoples of Quebec, in this way alluding to the resolution on the recognition of aboriginal rights put to a vote by the Quebec National Assembly on March 20, 1985, as an initiative of premier René Lévesque.

The Quebec government also stated that this collaboration with the aboriginal peoples has the complete and equal participation of the First Nations and their governments, who possess an inherent right to exercise self-government in the process implemented by the government and in this partnership established based on specific consultations. Respect of this principle would allow the Mi'gmaq Nation to advance its sectorial development plan for the Gespe'gewa'gi

natural resources, and would, in the process, promote partnership between our Nation and the non-aboriginal parties who are implicated in potential resource development.

As a Nation, we believe that development could be acceptable if the government follows the above-mentioned goals and uses a method of developing energy that is respectful of the expectations, rights and priorities of each party and takes into account and encourages consultation with and accommodation of the aboriginal peoples as pertains to the development of the natural resources on our land. Development would be acceptable if the government adopted an attitude of consultation and accommodation towards our Nation since, in this way, there would be better chances that projects would correspond with the values and principles of our Nation while promoting its economy and energy development. Moreover, as you know, the aboriginal peoples have values in harmony with their land and the environment. Therefore, by adopting a method of consultation with our Nation prior to establishing projects, our environmental values and principles will be respected and heard.

However, it must be rightly understood that our requirement for consultation is not only based on our values of harmony with the

environment and our ancestral land, but also is founded on a legal basis, clearly defined by the Supreme Court of Canada clearly defined in two decisions (*Haida + Taku River*) inspired from of this consultation. This jurisprudence is a significant confirmation that could affect all projects planned for the entire Gespe'gewa'gi land. To summarize, in these two important decisions, the Supreme Court decided that:

- The duty to consult and accommodate the Native Peoples exists from the moment a representative of the Crown has knowledge, concrete or attributed, of the possible existence of a title or ancestral rights and is considering taking steps that could have prejudicial effect on these rights or this title;
- The extent of the duty to consult depends on the preliminary evaluation of the strength of the evidence supporting the existence of the claim of right or title and of the seriousness of the potential prejudicial effects on the right or the title;

- In any case, the duty requires the Crown to truly and in good faith consult the Aboriginal peoples involved and that it be willing to modify its plans in light of the data collected during the process;

- When the claim rests on a piece of evidence which, at first sight is solid, and that the decision that the government intends to make could significantly prejudice the rights of that claim, the duty to accommodate could require adopting measures to avoid irreparable prejudice or reduce the impact of prejudice until a definite decision has been rendered on the underlying claim.

These decisions should remind the Quebec government of the importance of bringing consultation and accommodation to another level – one stemming from the principle of the recognition of the inherent right of Aboriginal peoples to self-government and to guarantee, by this mere fact, a significant participation of the Mi'gmaq Nation in this process.

In light of these important decisions and of our aboriginal title, and with the aim of guiding the consultation and accommodation process

out of respect for the principle of Mi'gmaq peace and friendship we quote part of the eloquent conference called "**Le nouveau rôle des autochtones dans le développement au Québec : Les obligations de consultation et d'accommodement**" presented by Me David Schulze on June 4, 2005, in Gatineau, during the Barreau du Québec convention: *"The process through which the cause of the Taku River Tlingit came about teaches us what would be an adequate consultation and accommodation process because the Supreme Court of Canada judged its results to be acceptable. In this case:*

- *The approval process of the project was conducted under the provincial Environmental Assessment Act which requires that the Aboriginal peoples be invited to take part in a review committee when the project was located on their traditional land;*
- *The First Nation fully participated as a member of the project review committee;*
- *The First Nation was financially assisted to participate in several review committee meetings;*

- *Faced with the concerns of the First Nation, the provincial organization in charge of environmental review mandated an expert deemed acceptable by the First Nation to conduct a study specifically on the traditional use of lands, under the auspices of an aboriginal steering committee.*

Me Schulze continued by illustrating another recent example of appropriate environmental review as part of an environmental review process undertaken during mineral exploration in Labrador between 1997 and 1999: *"Also, the environmental review process undertaken for the Voisey Bay project in Labrador could provide an example: As parties, the Innu Nation organizations and the Labrador Inuit Association, just like the provinces, could suggest lists of candidates to the review committee, out of which at least one candidate would have to be appointed a member by the federal government. In addition, the secretariat of the commission was established in Inuit land in Nain, Labrador, with public information centres on Innu lands with services in inuktitut, including its final report tabled in 1999. The budget was established by the four parties. "*

The Supreme Court of Canada decisions on Haida and Taku River deal with the duty of consultation, but keep in mind that they also deal with

accommodation. For the Mi'gmaq Nation, as our claim on the land rests on convincing *prima facie* evidence and the wind power development projects infringe on OUR TITLE AND our aboriginal rights, a satisfactory solution for all parties involved (MI'GMAQS, QUEBEC, MANUFACTURERS, GASPÉ RESIDENTS, etc.) must come first.

The Mi'gmaq Nation suggests that greater participation from our Nation in natural resource management on our land be ensured, in keeping with the previous requests made, in order to promote socio-economic development initiatives in our Nation. For your information, the following recommendations are drawn from the Royal Commission on Aboriginal Peoples.

1. WHEREAS the Quebec government is committed to working in collaboration with the federal, regional and aboriginal governments on the creation of resource co-management models on aboriginal ancestral lands;
2. WHEREAS these co-management models be used provisionally until an the end in negotiations is reached on the conventional treaties with the aboriginal nations involved;

3. WHEREAS the co-management organizations respect and integrate traditional aboriginal knowledge;
4. WHEREAS the Quebec government guarantees long-term financing to these organizations to reinforce their stability and give them the opportunity to acquire and develop the necessary skills and expertise;
5. WHEREAS the Quebec government and the Mi'gmaq Nation create a permanent roundtable on energy development and the environment;
6. WHEREAS the Quebec government works with the Mi'gmaq Nation to develop a professional training program for the Mi'gmaq community members so they develop technical expertise and management abilities in the field of natural resources development.

The opinions expressed by the Mi'gmaq Nation in this paper essentially refer to the concepts of aboriginal title and to the government's obligation to consult and accommodate the Mi'gmaq Nation. In fact, the issues of title and ownership urgently need to

be resolved before the government commits itself to any natural resource development, following the guidelines defined by the Supreme Court of Canada relating to consultation and accommodation.

Moreover, even if we work together to address our land claims, there is a moral and legal obligation for the Quebec government to adequately consult and accommodate the Mi'gmaq Nation from Gespe'gewa'gi when it comes to natural resource planning and development on our land.

Only in this precise framework will the Mi'gmaq Nation recover its economic self-sufficiency and its sovereignty, and work responsibly to improve the socio-economic conditions of its members, which, in this way, will have a positive effect on Quebec and Canada.

The Mi'gmaq respect and consider the economic impact of natural resource development. However, this development can not be done to the detriment of any environmental considerations. The richness and beauty of our earth must remain at the centre of all parties' interests.

Our recommendations are given with the primary aim forming a basis for accomplishing these greater goals, together.

CONCLUSIONS

A. General Comments – Mi'gmaq position vis a vis development in Mi'gmaq territory

- i) The Mi'gmaq Nation has never surrendered nor ceded its rights or title in Gespe'gewa'gi territory, we have the exclusive right to the lands and resources in our territory.
- ii) The Mi'gmaq Nation supports sustainable economic development where that development respects our title, rights and interests.
- iii) The Province of Quebec and Hydro-Quebec do not respect our title, rights and interests and, as such, are infringing on our title and rights.

- iv) The Government of Quebec and Hydro-Quebec have a stand alone obligation to consult and accommodate the Mi'gmaq Nation and have failed to act on this duty.

B. Specific Issues – related to the proposed transmission line

- i) In its present location, it will destroy important winter feeding grounds for deer.
- ii) It will have impact on Mount Saint Joseph (“Tlagategei emmi gegweg”), a sacred Mi'gmaq site where we continue to hold important ceremonies.
- iii) It will cut a highly visible 46 meter wide scar down the side of the mountain, giving clear view to some 40 pylons some 50 meters tall. This will be clearly visible to residents and tourists alike, a serious impairment to the natural integrity of one of the world's most beautiful bays. It will impact on the area's number one industry – tourism.

C. Recommendations

- i) Along with other residents in the area, the Mi'gmaq want the beauty and integrity of this mountain area protected for our future well being. A relocation of the line may increase the short term project costs but the long term benefits to the area will be substantive.

- ii) The failure of the Crown to "consult and accommodate" the Mi'gmaq says little to the honour of the Crown. Cooperation cannot be extorted, it must be earned. We are asking for an open and participatory process to resolve our issues and concerns (on this and other developments in our territory) so as to assure a mutually beneficial outcome that will stand the test of time.