

# O'Reilly & Associés

A V O C A T S

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By email and facsimile

February 16, 2010

Board of Commissioners of Public Utilities  
c/o Cheryl Blundon  
Director Corporate Services & Board Secretary  
Suite E210, Prince Charles Building  
120 Torbay Road  
St. John's, NL  
A1A 5B2

Re : **Application by Nalcor Energy pursuant to s 5.5(1) of the Electrical Power Control Act – Revision of IUM's request for Intervenor status**

Dear Ms. Blundon,

The intervenors the Innu of Uashat mak Mani-Utenam, the Innu Takuaikan Uashat mak Mani-Utenam Band Council and certain traditional families of the Uashat mak Mani-Utenam Innu Nation ("IUM") have made three revisions to their Request for Intervenor status filed on December 21, 2009. More particularly, revision number #1 is located on page 2, paragraph 12; revision #2 is located on page 3, paragraph 12; revision #3 is located on page 4.

We have attached a copy of this revised Request for Intervenor status dated February 16, 2010 to be filed in the record.

Trusting the foregoing is satisfactory, I remain,

Yours truly,

O'REILLY & ASSOCIÉS



Gary Carot

cc. David Schulze, Counsel for the Innu of Ekuanishit  
Geoffrey P. Young, Counsel for Nalcor Energy  
Jamie Smith, Q.C., Counsel for Churchill Falls (Labrador) Corporation

**IN THE MATTER OF** the *Electrical Power Control Act*, 1994, SNL 1994, Chapter E-5.1, as amended ("EPCA"); and

**IN THE MATTER OF** an application by Nalcor Energy to establish the terms of a water management agreement between Nalcor Energy and Churchill Falls (Labrador) Corporation Limited for the Churchill River, Labrador

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**1<sup>st</sup> REVISION: PAGE 2, PARAGRAPH 12 – FEB. 16, 2010**

**2<sup>nd</sup> REVISION: PAGE 3, PARAGRAPH 12 – FEB. 16, 2010**

**3<sup>rd</sup> REVISION: PAGE 4 – FEB 16, 2010**

**TO :** The Board of Commissioners of Public Utilities

**THE INNU OF UASHAT MAK MANI-UTENAM, THE INNU TAKUAIKAN UASHAT MAK MANI-UTENAM BAND COUNCIL AND CERTAIN TRADITIONAL FAMILIES OF THE UASHAT MAK MANI-UTENAM INNU NATION SUBMIT ("Intervenors"):**

**(i) The Intervenors' interest in the matter**

1. The Innu TakuaiKAN Uashat mak Mani-Utenam Band Council is the elected representative of the Innu of Uashat mak Mani-Utenam pursuant to the *Indian Act*, R.C.S. 1985, c. I-5. It is seeking to intervene in the present proceedings in its own name and on behalf of the Innu of Uashat mak Mani-Utenam.
2. The traditional families of the Uashat mak Mani-Utenam Innu Nation who are plaintiffs in the Federal Court proceedings *Edouard Vollant et. al. c. Sa Majesté la Reine* (file no. T-568-07) are also seeking to intervene in the present proceedings.
3. The Intervenors claim aboriginal title, aboriginal rights and treaty rights in the portion of Nitassinan often referred to as Labrador.
4. Since time immemorial, or, at least since several centuries prior to contact with Europeans, the Intervenors have continuously occupied, possessed, controlled and managed their traditional lands. The traditional lands of the Intervenors include all of Labrador, namely the lands and natural resources located approximately between Parallels 52 and 56 of latitude north and Meridians 61 and 69 of longitude west. Some parts of the traditional lands are shared with other Innu or Aboriginal groups.



5. More particularly, the Intervenor currently live, occupy, possess and use the western, central and northern portions of Labrador located approximately between Parallels 52 and 55 of latitude north and Meridians 62 and 68 of longitude west.
6. The Intervenor possess, occupy and use the territory and natural resources which will be affected by the water management agreement.
7. In 1979, the Government of Canada accepted to negotiate with the Innu in regard to their land claims. The Government of Québec followed suit in 1980.
8. In January 2005, the Government of Newfoundland-and-Labrador in partnership with Newfoundland and Labrador Hydro issued a *Request for Expressions of Interest and Proposals* ("Request") for participation in the development of the Lower Churchill hydroelectric project. The Request acknowledges that the Innu of Uashat mak Mani-Utenam claim aboriginal rights in Labrador and that they may need to be consulted.
9. On April 5, 2007, certain traditional families of the Uashat mak Mani-Utenam Innu Nation filed proceedings in the Federal Court (*Edouard Vollant et. al. c. Sa Majesté la Reine* – file no. T-568-07) seeking a declaration of aboriginal title, aboriginal rights and treaty rights in respect to their family territories and traditional territory located in Labrador.
10. In July 2008, the Government of Canada and the Government of Newfoundland-and-Labrador issued the *Environmental Impact Statement Guidelines* ("Guidelines") for the Lower Churchill hydroelectric project. The guidelines direct Nalcor Energy to consult with the Innu of Uashat mak Mani-Utenam.
11. On July 17, 2009 and December 18, 2009, the Intervenor provided - without prejudice to their rights and without prejudice to any legal proceedings - comments to the joint panel reviewing the proposed Lower Churchill hydroelectric project, particularly in regard to the deficiencies and inadequacy of the environmental assessment conducted by the proponent Nalcor Energy.

**(ii) The disposition of the proceedings which the Intervenor advocate**

12. AN ORDER refusing to establish the terms of a water management agreement, or in the alternative, AN ORDER staying the proceedings in regard to the establishment of the terms of a water management agreement pending meaningful consultation and accommodation of the Intervenor;

**Revision #1 (Feb. 16, 2010):** An ORDER that the Crown meaningfully consult and accommodate the Intervenor in regard to the water management agreement or the management of water thereunder, and an ORDER that Nalcor and CF(L)Co. meaningfully consult and accommodate the Intervenor in regard to the water management agreement or the management of water thereunder;

**Revision #2 (Feb. 16, 2010):** Or, in the further alternative, an ORDER establishing a term of the water management agreement that directs the Crown (1) to meaningfully consult and accommodate the Intervenor in regard to the water management agreement or the management of water thereunder and (2) to report back to the Board thereon; and an ORDER establishing a term of the water management agreement that directs Nalcor and CF(L)Co. (1) to meaningfully consult and accommodate the Intervenor in regard to the water management agreement or the management of water thereunder and (2) to report back to the Board thereon;

13. AN ORDER in any event of the cause that Nalcor Energy pay all the expenses incurred by the Intervenor in connection with these proceedings.
14. If the Board of Commissioners of Public Utilities orders that all expenses of the Board of Commissioners of Public Utilities in connection with these proceedings be paid by the parties, AN ORDER that these expenses be paid by Nalcor Energy and Churchill Falls (Labrador) Corporation Limited.

**(iii) The facts the Intervenor propose to show in evidence**

15. The Intervenor possess, occupy and use the territory and natural resources which will be affected by the water management agreement.
16. The Government of Newfoundland-and-Labrador and Nalcor Energy have knowledge, real or constructive, of this possession, occupation and use by the Intervenor as well as their claims to aboriginal title, aboriginal rights and treaty rights in the territory which will be affected by the water management agreement.
17. The Intervenor have not been consulted by the Government of Newfoundland-and-Labrador, Nalcor Energy, and Churchill Falls (Labrador) Corporation Limited with respect to the water management agreement.

**(iv) The reasons why the Intervenor believe the board should decide in the manner advocated**

18. There is a strong *prima facie* case in support of the claim to aboriginal title, aboriginal rights and treaty rights of the Intervenor.
19. The establishment of the water management agreement will adversely affect the rights and title of the Intervenor.
20. The Board of Commissioners of Public Utilities must exercise its decision-making function in accordance with the dictates of the Constitution, including s. 35 of the *Constitution Act, 1982*.



21. The Board of Commissioners of Public Utilities must determine whether the Crown's duty to consult and accommodate has been triggered and whether this duty has been fulfilled with respect to the establishment of the water management agreement.

**(v) The qualification of expert witnesses, if any, whose opinions are to be relied upon**

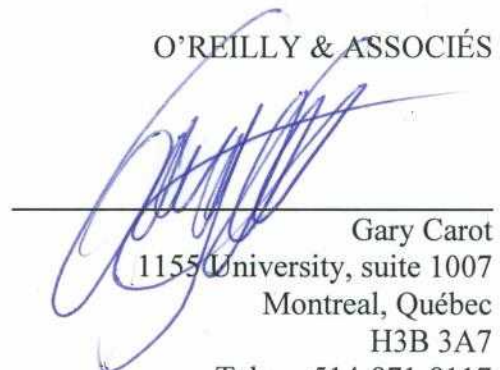
**(vi) List of information and support documents that may be useful in explaining the Intervenor's representation**

22. Government of Newfoundland and Labrador, *Request for Expressions of Interest and Proposals*, January 2005.
23. Amended Statement of Claim at the Federal Court of Canada, no. T-568-07, *Edouard Vollant et. al. c. Sa Majesté la Reine* – June 20, 2007.
24. Government of Canada and Government of Newfoundland and Labrador, *Environmental Impact Statement Guidelines, Lower Churchill Generation Project*, July 2008.
25. Comments provided by the Intervenor on July 17, 2009 and December 18, 2009 to the joint panel reviewing the proposed Lower Churchill hydroelectric project.
26. Such other information and documents as counsel may advise and the Board Board of Commissioners of Public Utilities shall permit.

Communications may be sent to the undersigned acting as agent for the Intervenor.

**Revision #3 (Feb 16, 2010):** Montreal, this 16<sup>th</sup> day of February, 2010

O'REILLY & ASSOCIÉS



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