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Rebuilding Relations: Hydro-Québec and the Cree Nation (1994–2015)

- 1 November 18, 1994 marks a pivotal point in Québec history, as it is the date on which Québec Premier Jacques Parizeau announced the indefinite suspension of the Great Whale project due to economic risk and pressure from public opinion, stating that the project was not essential to meeting Québec's future energy needs. The decision resulted from five years of concerted efforts by the Cree Nation to formally oppose the project in court, sway public opinion and influence U.S. decision-makers. At that time, Hydro-Québec–Cree relations were at their lowest point.
- 2 Two decades later, Hydro-Québec and the Cree Nation now describe their relations as “excellent” and “constructive.” Unlike the highly controversial Great Whale project, Eastmain-1-A/Sarcelle/Rupert (2007) was considered a “new generation” project because of its focus on community consultation and participation throughout every project phase. This process allowed for the redefinition of the entities' roles and the relations between them, which were based on ongoing partnership practices and, in particular, the Cree Nation's increased involvement from the very first phase of the project. Ensuring the involvement and participation of the Crees enables them to be fully engaged in all aspects of project design. Hydro-Québec and the Crees rely on various joint committees and organizations—such as the Niskamoon Corporation—to coordinate their activities and enable them to quickly address and resolve issues before they become conflicts. Thus, the Cree Nation becomes a more cohesive entity and strengthens its administrative autonomy and local capabilities, while Hydro-Québec incorporates the concept of a social license to operate into its processes and procedures.
- 3 The purpose of this article is to provide a better understanding of how relations between the government corporation and the Cree Nation, which were tainted by conflict and mistrust in 1994, transitioned into a partnership based on trust and mutual respect by 2015. It presents several perspectives (i.e., those of the protagonists and researchers) on the lessons learned through the process of addressing the controversy and social license to operate associated with a major project, particularly in an Indigenous context. The particular value of this article is that it was co-written by two key players from the two organizations and by two researchers, with the intention of fostering a better common understanding of these important events.¹
- 4 Many research papers (Carlson, 2008; Martin, 2003; Salisbury, 1986; Savard, 2013), scientific articles (Baba and Raufflet, 2015; Demers and Charbonneau, 2001; Whiteman, 2004), case studies (Morrison and Nitsch, 1993; Schiehl and Raufflet, 2013) doctoral theses (Martin, 2001; Savard, 2010), and a book chapter (Houck, 2011) have been published on the Great Whale hydroelectric project and the relations between Hydro-Québec and the Cree Nation. These publications gave rise to five main themes: solidarity and Indigenous governance of the territory (Martin, 2001 and 2003), Hydro-Québec's role in the Québec identity (Savard, 2010 and 2013), intra-community processes (Carlson, 2008; Salisbury, 1986; Whiteman, 2004), controversial environmental issues (Houck, 2011; Morrison and Nitsch, 1993), business–community relations (Baba and Raufflet, 2015; Demers and Charbonneau, 2001), and the economic (Desbiens, 2013) and cultural (Desbiens and Rivard, 2014) geography perspective.
- 5 With the exception of the recent study by Baba and Raufflet (2015), none of the above-mentioned research documented the process of rebuilding relations between Hydro-Québec and the Cree Nation from 1995 to 2015; rather, most of it focused on the controversy and the governance processes relating to the Cree Nation. By looking back on the lessons learned, this article contributes to the research by re-examining the process of rebuilding relations between Hydro-Québec and the Crees.
- 6 The article is divided into four parts. Part one represents the pivotal moment when the Great Whale project was suspended in 1994, parts two and three constitute an analysis of the process of rebuilding relations between Hydro-Québec and the Crees over two periods (1995–2001 and 2002–2015), and part four focuses on the lessons learned from this experience and applied

to later projects, especially in an Indigenous context.

1994: A watershed moment

7 Québec Premier Jacques Parizeau announced the indefinite suspension of the Great Whale project on November 18, 1994. The announcement constituted a reversal of the power relationship between Hydro-Québec and the Québec government on the one hand, and between Hydro-Québec and the Crees on the other. The debate on hydroelectric projects (which thus far, had been dominated by Québec policy-makers) slowly shifted in favor of the Crees (Savard, 2010: 330–331).

“I have made a major decision in that I have announced that my government will not get involved in the Great Whale project for the simple reason that that there has never been any proof that we need this energy. For years now, Great Whale has been the proverbial mirage in the desert and—I want to be clear here—my government had no intention of getting embroiled in it, either before or after the referendum.”² (Jacques Parizeau, Premier of Québec, 1994) [Unofficial translation]

8 This decision also reflected the outcome of Cree mobilization against a project the Nation had been opposed to from the moment of its announcement by then Premier Robert Bourassa five years earlier. Cree action at the time essentially stemmed from their dissatisfaction with the application of the *James Bay and Northern Québec Agreement (JBNQA)*, the “first modern land claim agreement in Canada” (Canadian Environmental Assessment Agency, 2011). This new-generation agreement, signed by both the Cree and Inuit people in November 1975, had to encompass future relations, namely between the Québec government, Hydro-Québec and the Crees, ensure successful cohabitation and cooperation between all three parties and “give Indigenous peoples the tools they need to improve their living conditions, while allowing Québec to develop the North” (Martin, 2001: 60). Implementation of the agreement led to a number of conflicts, given that the Crees had been voicing their skepticism concerning the government’s intention to implement the JBNQA in its entirety since the late 1980s.

“We had to fight constantly for fifteen years to force the governments to respect their commitments under the JBNQA. If I had known in 1975 what I know now about the way the text and commitments would be interpreted, I would have refused to sign the agreement! I would have gone to the Supreme Court and we would have found other ways of blocking the project, both legally and physically.” (Billy Diamond, Chief of the Grand Council of the Crees, 1990) [Unofficial translation]

9 In this new conflict, the Crees’ protests took two forms: legal proceedings in the provincial and federal courts (*Coon Come I* case) began in April 1990 to contest the environmental consultation processes associated with the project, and a strategy was implemented to influence the opinion of the U.S. public and potential buyers in the New England states, with a view to getting the project canceled and rendering it economically unfeasible. Members of both the Cree and Inuit communities decided to internationalize the conflict by undertaking an expedition in a boat named Odeyak. They were invited to speak at several U.S. universities, which quickly elicited interest throughout the United States and rallied several environmentalist groups to their cause. Their campaign’s wide visibility enabled the Crees to garner the support of U.S. ecologists and progressives and, by extension, of U.S. politicians who were sensitive to these issues (Dupuis, 2001). The campaign contributed to the March 29, 1994 decision by the New York Power Authority to cancel their \$17-billion hydropower supply contract with Hydro-Québec (Séguin, Gibbon and Fraser, 1994). Combined with the deregulation of the electricity market, which rendered long-term contracts obsolete, the cancellation called the project’s economic viability directly into question.

10 Ultimately, as a result of the cancellation of the U.S. power purchase contracts, the deregulation of the electricity market and the Québec government’s decision to abandon the Great Whale project, and given that the sociopolitical context was biased in favor of the Crees, relations between the Québec government, Hydro-Québec and the Crees came to an impasse.

1995: The need to start rebuilding relations

Attempts at reconstruction: From an agreement to an agreement on the agreement

- 11 The period following the “suspension until further notice” of the Great Whale project was marked by many efforts on the part of both the Crees and the Québec government. On May 23, 1995, David Cliche, Parliamentary Secretary to the Minister of Native Affairs and Chief Billy Diamond, negotiator for the Cree Nation, signed a Memorandum of Understanding (MOU) confirming the resumption of dialogue between Québec and the Crees for the purpose of implementing certain provisions of the JBNQA. The document was signed in the presence of Québec Premier Jacques Parizeau, Grand Chief Matthew Coon Come and the chiefs of the Cree communities. However, implementing the MOU proved difficult; so much so, in fact, that on March 27, 1998, Guy Chevrette, the Minister responsible for Native Affairs and Grand Chief Matthew Coon Come signed the *Agreement on the Implementation of the Memorandum of Understanding of May 23, 1995*, which set out structures and funding to be used to carry out studies and planning or to finance the work required to complete certain priority projects.
- 12 However, the failure of both rounds of negotiations on forestry between 1998 and 2000 cast doubt on the hope of easing tensions and rebuilding relations, despite the signing of the 1995 and 1998 agreements. During that same time period,

“...major court proceedings took place, alleging that the two governments were in ongoing default of their obligations under the *James Bay and Northern Québec Agreement*. All sections of the JBNQA were targeted (except for Section 30), and damages were sought for each default declared by the Crees.” (Interview conducted with a senior official from the Secrétariat des affaires autochtones du Québec, July 24, 2012) [Unofficial translation]

- 13 This deterioration in relations had a twofold effect. Firstly, it jeopardized the possibility of any further hydroelectric development in the Baie-James region. Secondly, it limited the possibility of improving the Crees’ living conditions, which were already dire and getting worse; “The unemployment rate was 70%, and there was a lack of infrastructure, community centres and housing,” stated John Paul Murdoch. Despite the lack of exact data on the socioeconomic conditions of the Crees at the turn of the 21st century, it is generally acknowledged that “the Crees were living in what can be called extreme poverty.”³ (Harder, 2002).

Hydro-Québec: Corporate turning point and sustainable development

- 14 Hydro-Québec was affected by the many changes that occurred during the second half of the 1990s. With the deregulation of the North American energy market, electricity became a commodity that could be traded on an exchange, like gold or oil. Hydro-Québec had to adjust to these new conditions and to the fact that the long-term contracts it used to sign were now obsolete. In this new context, Premier Lucien Bouchard placed André Caillé at the helm of the government corporation with the task of ensuring that Hydro-Québec would profit from the new energy market, among other mandates. Mr. Caillé subsequently named Thierry Vandal to head the Hydro-Québec Production division.
- 15 Under the new administration, Hydro-Québec adopted a policy stating that all new projects had to be cost-effective, environmentally acceptable in accordance with the principles of sustainable development, and favorably received by their host communities. In the late 1990s, Hydro-Québec wanted to show that it had changed, especially to the Indigenous communities. The company studied two partial river diversion projects—one on the Côte-Nord (north shore of the Rivière Saint-Laurent) and one in the Baie-James region. The latter project involved partially diverting the Rivière Rupert and building a generating station on the Rivière Eastmain.

Divergent views within the Cree Nation

- 16 Contrary to what occurred with Great Whale, Hydro-Québec wanted to ensure Cree participation in the Rupert diversion project. This time, the aim was not to impose the project on the Crees but rather, to give them the choice of accepting or rejecting the partnership proposed to carry out the project jointly. Informal exchanges with Cree community members and representatives from the Grand Council of the Crees (Eeyou Istchee) (GCCEI) led to a first official meeting on June 12, 1998, between Hydro-Québec, Cree community chiefs and GCCEI representatives to examine the partnership proposal related to the partial Rupert diversion project and the construction of Eastmain-1 powerhouse, which differed from what was set out in the JBNQA. As a result, this was considered a new project and, as such, would be subject to the environmental assessment process set out in Section 22 of the JBNQA. Following the meeting, Romeo Saganash, the director of GCCEI-Québec relations, sent Hydro-Québec a series of questions. Although some of the questions could be addressed quickly, field surveys were required to answer others. The Crees agreed to attend the meetings, even though they did not yet support the project.
- 17 In January 1999, Mr. Vandal sent Mr. Saganash a proposal that set out a schedule for the joint studies, negotiations and environmental assessment process for the project. In March 1999, representatives from GCCEI and HQ/SEBJ (Hydro-Québec/Société d'énergie de la Baie-James) were designated to implement the schedule. However, on May 5, the chiefs of the six Cree communities affected by the project sent a letter to Grand Chief Matthew Coon Come expressing their discontent at being excluded from the discussions between Hydro-Québec and the GCCEI. Hydro-Québec was not yet aware of the letter when, at the request of the chiefs of the communities concerned, it was called to a meeting on May 6 to discuss its partnership proposal. The Cree representatives at the meeting indicated that things were not moving forward with the GCCEI and said that they wanted to set up a work group, open offices in each of the six communities, establish a budget to enable the Crees to analyze Hydro-Québec's proposal and carry out the field surveys, etc.
- 18 It was not until July that Hydro-Québec saw the letter, which had been published in *The Nation* magazine, and found itself unwittingly caught in the middle of the conflict between the leaders of the six Cree communities and the GCCEI. In September, Ted Moses was elected Grand Chief of the Cree Nation. In his inaugural message, he addressed the issue of the rights of the Cree Nation and communities and argued that, for the sake of Cree unity, the Grand Council of the Crees was the only representative authority that could rule on the acceptance or refusal of a development project.

Managing conflicting relations

- 19 During the same period, opposition to the project was growing, both on the Cree side and from pressure groups. At the international level, the World Commission on Dams (WCD), whose mandate is to conduct rigorous, independent reviews of the effectiveness of large-dam development throughout the world, evaluate alternative scenarios and propose guidelines, published its report in November 2000. One of the Commission's recommendations specifically concerned Indigenous peoples: "Acceptance emerges from recognising rights, addressing risks, and safeguarding the entitlements of all groups of affected people, particularly indigenous and tribal peoples [...]" (World Commission on Dams, 2000: 215). For many stakeholders, the notion of free prior and informed consent became a *sine qua non* condition of carrying out any development project in an Indigenous environment.
- 20 At the request of the Mistissini, Eastmain and Chisasibi chiefs, several public information meetings were held between the summers of 1999 and 2000. A further meeting was called between Grand Chief Ted Moses and Hydro-Québec CEO André Caillé, prior to which a preparatory meeting was held between the representatives of Hydro-Québec and the GCCEI. The GCCEI representatives informed Hydro-Québec that the organization had designated a new negotiator to handle issues between the Crees and HQ/SEBJ, and that the discussions between Mr. Caillé and Grand Chief Moses might be a good starting point. They stated that the GCCEI wanted to take the initiative on this issue by reiterating that their current opposition to any new hydroelectric development remained unchanged.

21 Messrs. Caillé and Moses met on August 14, 2000 and a joint press release was issued, in which Mr. Moses stated the following:

“I told Mr. Caillé that we can’t plan any new agreements or make any new promises before the initial commitments are met. Although the Crees remain opposed to new hydroelectric projects, we are prepared to study the Eastmain-1 project so that we can respond with full knowledge of the facts.” (Hydro-Québec press release, unofficial translation)

22 The Crees and Hydro-Québec were having difficulty seeing eye to eye. For the Crees, it was essential that the JBNQA issue be settled before any agreements concerning the Eastmain/Rupert project could be envisaged. Hydro-Québec was not against resolving the issue of the contractual obligations and commitments set out in the Agreement, but saw generating value as the priority, which meant dealing with the Eastmain/Rupert project first. For Hydro-Québec, the two issues were inexorably tied together.

23 At the GCCEI’s request, the partnership proposal for a project to partially divert the Rupert and build a new generating station was presented for the last time in Waskaganish on June 21, 2001, during a special general meeting on natural resources. Hydro-Québec’s presentation was interrupted by a group of protesters opposing the project. The meeting ended on a sour note for Hydro-Québec, as the corporation had no intention of imposing the project on the Crees, and since the Cree community, including a number of Cree leaders, appeared to be against it. Since the differences between the Crees and Hydro-Québec only seemed to become more and more irreconcilable, an internal decision was made to suspend the project.

A new context in Québec

24 The issue of socioeconomic conditions gave way to reconciliation. In March 2001, Bernard Landry replaced Lucien Bouchard as Premier of Québec. Premier Landry wanted to put an end to the conflict between his government and the Crees. At the same time, Ted Moses wanted to work with the Québec government to rebuild relations between them and to ensure the development and sustainability of the Cree Nation. The two key players met to discuss settling the disputes concerning non-compliance with certain commitments stipulated in the JBNQA. The Crees and the Québec government signed an agreement in principle on October 23, 2001. Hydro-Québec was not involved in negotiating the agreement in principle and was not one of the signatories. However, since one of the purposes of this nation-to-nation agreement was to ensure the development of hydropower through the partial Rupert diversion and Eastmain-1 powerhouse as set out in the JBNQA, Hydro-Québec did participate in negotiating the final agreement. While Québec and the Crees were negotiating the provisions of the *Paix des Braves*, HQ/SEBJ and the Crees negotiated the contents of nine other agreements in under three months.

26 In January 2002, the Cree leaders conducted a tour of their communities to inform them about the contents of the agreements they had negotiated. At the end of the tour, a referendum was held in each of the nine Cree communities. Participation in the referendum was unprecedented and resulted in 70% of the Crees voting in favor of the project and 30% voting against it. Chisasibi was the only community where most of the population voted against the project.

A nation-to-nation agreement

27 In Waskaganish on February 7, 2002, Grand Chief Ted Moses and Premier Bernard Landry signed the *Paix des Braves*, a framework agreement that proposed a new relationship between the government of Québec and the James Bay Crees and modified several controversial sections of the JBNQA. In signing the agreement, the Crees waived all legal proceedings against the Québec government. The document also gave the Cree communities a great deal of administrative power and autonomy, created common ground for development of the Eastmain and Rupert rivers and provided for economic benefits of \$3.5 billion over a period of 50 years (Secrétariat aux affaires autochtones, 2005). Also in Waskaganish on the same day, immediately after signing the *Paix des Braves*, HQ/SEBJ and the Crees signed the nine agreements that marked the start of their new relationship.

28 With the signing of the *Paix des Braves*, the Crees consented to immediate construction of the Eastmain-1 project. In addition, the parties agreed to the partial Rupert diversion, but stipulated that a second generating station—Eastmain-1-A powerhouse—be built in addition to the

Eastmain-1 facility. The project was subject to applicable environmental legislation and the environmental and social protection regime stipulated in Section 22 of the JBNQA.

29 The *Paix des Braves* had just split the project in two, making it more complicated to carry out as well as more expensive.

Permanent liaison committee

30 A permanent liaison committee was set up as a forum for exchange and coordination to help strengthen relations between the two nations, evaluate, implement and follow up on strategies, and resolve problems and disputes. As stated by Roméo Saganash in 2003:

“...we will not make the same mistake we made in 1975 [...]. After the James Bay Agreement was signed in 1975, everybody just went home and didn't worry about the outcome or implementation of the agreement, which was very progressive for its time. This time, people said 'We're going to set up committees to ensure that the agreement is implemented and monitored.' That's what we've done and it's working very well.” (Radio Canada, 2003) [Unofficial translation]

31 The day after the *Paix des Braves* was signed, SEBJ began the construction of Eastmain-1 powerhouse and HQ/SEBJ set up a partnership with the Crees to conduct an Environmental Impact Assessment (EIA) for the Eastmain-1-A/Rupert project in accordance with the provisions of the *Boumhounan Agreement*. Drawn up exclusively between Hydro-Québec, the Société d'énergie de la Baie James (SEBJ) and the Crees, the *Boumhounan Agreement* proposed innovative solutions to ensure Cree participation in projects, both before and after the EIA. It also ensured “wider Cree participation through structures, financial resources and information dissemination tools.” (Lajoie, 2008) [Unofficial translation]

32 In the wake of all the agreements signed on February 7, 2002, the Crees agreed to participate in a process that went above and beyond the concept of free prior and informed consent. The process, which entailed maintaining good day-to-day relations between HQ/SEBJ and the Crees throughout the Eastmain-1-A/Rupert project, marked the 2002–2015 period.

2002 to 2015: Moving toward a social license to operate

33 The day after the nine agreements were signed, the challenge facing HQ/SEBJ and the Crees was that of creating and ensuring the proper functioning of various joint ventures (NPOs) and committees, including the following:

- The Nadoshtin Company, for the Eastmain-1 project
- The Boumhounan Committee, for the EIA for the Eastmain-1-A/Rupert project
- The Nameess Corporation, for application of the *Mercury Agreement (2001)*
- The Apatisiwin Corporation, for application of the *Cree Employment Agreement*
- A dispute resolution committee, for application of the *Agreement Respecting Disputes and a Dispute Resolution Committee*

34 After more than a quarter of a century of court cases and mistrust, the parties took measures to ensure that, this time, the organizations and committees would work together in harmony. In regard to the dispute resolution committee, Hydro-Québec and the Crees announced that former Québec Premier Lucien Bouchard had been named as mediator.

Focus on the future

35 In March 2004, while the Environmental Impact Statement (EIS) was being prepared, HQ/SEBJ and the Crees were settling their legal disputes over contractual obligations and commitments under the JBNQA. Both parties wanted to put the earlier conflicts that had tainted their relations behind them and forge a new, forward-thinking relationship based on mutual respect, good faith, reconciliation, partnership, concrete participation and mutually beneficial social and economic arrangements. With this in mind, the *Agreement Concerning a New Relationship between Hydro-Québec/SEBJ and the Crees of Eeyou Istchee* put an end to all litigation and the Crees agreed not to take any further legal action relating to past application of the JBNQA and the Hydro-Québec–Cree agreements.

36 In return, the agreement set out provisions that included implementing safety measures for the Crees related to the La Grande complex, setting up a financing mechanism that would remain in place as long as the La Grande complex was in operation and that would mitigate the complex's impacts on the Crees' activities, economy, environment and well-being, and establishing a permanent forum for exchange and dispute resolution mechanisms.

37 The spirit in which the parties agreed to this arrangement also reflected the smooth operations and cooperative spirit that exist within the other organizations and committees that have worked together since 2002. However, the increased number of such organizations and committees also posed a problem for the Crees, as it was harder for them to determine which organization to deal with to ensure that a project or program was eligible for funding.

Implementation: Striving for simplicity and structure

38 In August 2004, to establish more effective measures through which to apply the agreements between Hydro-Québec and the Crees, ensure better coherence and facilitate, simplify and accelerate access to the various funds arising from these agreements, the parties decided to group all the joint companies' mandates into one—the Niskamoon Corporation. Unlike for the other organizations set up thus far, all the members of the Niskamoon Board of Directors, including those representing Hydro-Québec (on recommendation by the latter), were named by the Cree Regional Authority (now known as the Cree Nation Government). The creation of the Niskamoon Corporation consolidated the relationship between Hydro-Québec and the Crees and unified the members of the Board of Directors.

39 In late December 2004, HQ/SEBJ filed the Environmental Impact Statement (EIS) for the Eastmain-1-A/Sarcelle/Rupert project with the relative authorities to obtain the required certificates of authorization. The creation of the partnership and the synergy between HQ/SEBJ and the Crees brought about by the Boumhounan Committee greatly facilitated the proponent's task in terms of the project's opponents and the Review Committee. For the Crees, particularly those affected by the project, the fact that they had participated in all project phases enabled them to better identify appropriate measures and demonstrate the cooperation that had existed since 2002.

Construction of the Eastmain-1-A/Sarcelle/Rupert project (2007 to 2013)

40 In February 2007, HQ/SEBJ obtained all the necessary certificates of authorization to build the Eastmain-1-A/Sarcelle/Rupert project. However, the certificates came with 97 conditions, almost all of which related to the biophysical and human environments. To meet these conditions, the Niskamoon Corporation and HQ/SEBJ extended the mandate of the Boumhounan Committee, which had proven effective during the impact assessment process, by signing the *Monitoring Committee Agreement* in September 2007. The Committee acted as a joint forum to ensure continued, significant Cree participation in the development and implementation of the project's follow-up program on environmental issues important to the Crees, as well as to ensure dissemination in the Cree communities of the information on the various programs and studies under the Committee's or HQ/SEBJ's responsibility.

41 The parties were able to ensure the partnership's continuity since the start of construction of Eastmain-1-A/Sarcelle/Rupert (ESR) overlapped with the completion of the Eastmain-1 project. In contrast, the new project was considerably more complex in scope and required three separate jobsites several hundred kilometres apart. Therefore, the parties put the necessary structures and personnel in place to handle issues that might arise during construction.

Involving the Cree workers

- 42 Overall, the efforts deployed at the different jobsites with the Cree counsellors hired to support the site managers yielded very good results, as evidenced by the follow-up studies carried out with the Cree workers. The cooperation between site managers, the work of the Cree coordinators at the different sites, particularly in terms of the relations among Crees and between Crees and non-Crees, and the support they provided to the environmental monitoring teams were greatly appreciated. Although the members of the Monitoring Committee were sometimes faced with significant challenges, their spirit of solidarity and openness made the Cree–HQ/SEBJ partnership even stronger. Today, the Monitoring Committee acts as the advisory forum through which ESR project-related issues between Hydro-Québec and the Crees are addressed.
- 43 Construction of the Eastmain-1 project proceeded as set out in the *Boumhounan Agreement* and generated satisfactory economic spinoffs. From 2002 to 2007, Crees on the project represented an average of 12% of the monthly workforce, i.e., 124 Cree workers. Between 2002 and 2005, 1,039 Crees (835 men and 204 women) worked on the project. Lastly, the Crees executed 66 contracts worth \$384 million, which corresponded to 31% of the total value of all contracts awarded. This far exceeded the objective of \$300 million established by the parties in the *Nadoshtin Agreement* signed for the Eastmain-1 project.
- 44 As was the case for the Eastmain-1 project, the amounts set out in the *Boumhounan Agreement* for the ESR project were significantly exceeded. From 2007 to 2011, the average number of Cree workers at the jobsites was 183, which represented approximately 6% of the total project workforce. An overall amount of close to \$850 million was paid out to 37 Cree companies and individual workers for the execution of 316 contracts. In other words, during the 2002–2011 period (preliminary data), hundreds of jobs were created for the Crees and contracts worth more than \$1.2 billion were awarded to dozens of Cree enterprises and individual workers.

Issues under discussion

- 45 One of the main issues associated with Eastmain-1-A/Sarcelle/Rupert (ESR) was instream flow. Even before the approvals for the project were granted, the Crees initiated discussions on the topic with HQ/SEBJ. They wanted to be sure that Hydro-Québec would implement the necessary measures to comply with the instream flow regime to be stipulated as a condition of the certificate of authorization with a view to preserving fish stocks and habitat, and contributing to the protection, ecology and use by the Crees of the territory covered by the Agreement. These discussions resulted in the signing of the *Rupert Water Management Agreement* in March 2009. The new agreement provided for the creation of the Rupert River Water Management Board, a joint forum made up of three representatives designated by Hydro-Québec, three Cree representatives and an independent chairperson selected jointly by the parties. The Board's mandate was to ensure that Hydro-Québec and the Crees would work in concert and cooperation to manage and maintain the instream flow and resolve all problem situations. Given that the Monitoring Committee's mandate would likely come to an end at some point and that the Rupert River Water Management Board would remain in place as long as the Rupert diversion was in operation, the latter's mandate would probably expand over time.
- 46 In late 2009, the Crees and HQ/SEBJ signed yet another document: the *Agreement Concerning Sarcelle Powerhouse*. This third agreement, the purpose of which was to facilitate completion of the ESR project, reflected the spirit of cooperation that now existed between the parties and was part of the long process of achieving acceptance of the project that began in 2002 with the signing of the *Boumhounan Agreement*. However, it was not until 2012 that the parties were able to propose ways and means of providing the Cree land users affected by the Rupert diversion with long-term benefits that would generally outweigh the project's adverse effects for as long as the river was partially diverted.

Commissioning and operation of Eastmain-1-A/Sarcelle/Rupert (2010 to present)

47 The *Agreement Concerning the Re-Appropriation of Territory Affected by the Eastmain-1-A/Sarcelle/Rupert Project* was a first for the Cree and Hydro-Québec in that it provided for the following:

- Transfer to the Crees of Hydro-Québec's obligations respecting the human environment under the certificate of authorization and the *Boumhounan Agreement*.
- Implementation of a mechanism that would allow the Crees to ascertain the status of and gauge the level of satisfaction with Hydro-Québec's efforts to meet its obligations under the certificate of authorization. The mechanism would provide for meetings between the parties to be held every three years to officially confirm the status of said obligations.
- Creation of a Continued Use and Re-appropriation Fund to address the repercussions on the population from the development and implementation of projects, work, studies and programs, and to carry out mitigation and enhancement measures designed to ensure the re-appropriation and continued use of the territory by Cree land users. The fund would be made up of annually indexed annuities paid to the Niskamoon Corporation (the fund manager) for as long as the Rupert was partially diverted.
- Other special measures and funds.

48 Notwithstanding the provisions of the Agreement, Hydro-Québec remained responsible for all project-related impacts on the biophysical environment and was still involved with the Monitoring Committee, the Rupert River Water Management Board and the Niskamoon Corporation. Human environment issues were still addressed jointly within the Monitoring Committee. The major difference was that it was the Niskamoon Corporation rather than Hydro-Québec that financed the mitigation or enhancement measures proposed by the land users, using the funds created under the Agreement. In terms of administration, it was much easier for the land users to deal with Niskamoon than with Hydro-Québec.

49 The support provided to the Cree land users concerned, the possibility of implementing the special measures developed to address their specific concerns and the regular follow-ups conducted by the Niskamoon Corporation made it easier for the Cree users to adapt to the changes and accept the disadvantages brought about by this project than it had been in prior Hydro-Québec projects. The daily challenge facing Hydro-Québec was, on the one hand, to ensure that the project's benefits outweighed its disadvantages and, on the other, to enable the Crees to gradually accept to live with the project and the changes it generated, rather than cease to use the affected areas, as had been the case on other projects. This was the starting point from whence a social license to operate could be achieved.

Conclusion and lessons learned on social license to operate

50 What the Crees and Hydro-Québec have accomplished since the early 2000s is remarkable on many levels. Firstly, they transformed a situation of conflict in which their relationship was tainted by mistrust and litigation into a partnership that even led to friendships. Secondly, the fact that a new relationship was forged despite very divergent viewpoints and that problems at all levels were quickly addressed and resolved to the satisfaction of the parties concerned meant that Eastmain-1-A/Sarcelle/Rupert retrospectively became a model project. Lastly, at the organizational level, the story of Hydro-Québec and the Crees clearly shows that constructive controversy can provide opposing parties with the opportunity to learn. For Hydro-Québec, the bond that developed with the Crees made it a better corporate citizen in terms of its relations with Québec's Indigenous communities. In fact, Hydro-Québec is now recognized as a leader in Indigenous relations. Many of the initiatives that proved successful in the Eastmain projects have been successfully adapted to other communities. For the Crees, the relations forged with Hydro-Québec enabled the Cree First Nation and its communities to assert their identity, solidify their structure and take charge of their socio-economic development through several local institutions, thereby gaining greater autonomy and strengthening their capabilities. Consolidating their local capabilities has enabled the Crees to organize their communities, and thereby contribute to reducing the volatility of the relationship that, within the Cree Nation, is connected to a multitude of divergent interests, and thus, facilitate the process of acceptability.

In this sense, it seems to us that the Crees' path to strengthening their capabilities and building institutions is quite a rare phenomenon throughout the world.

51 This mutual learning process was made possible thanks to an approach developed to encompass the principles of sustainable development for both the human and biophysical environments. The approach was based on respect for Cree socio-political organization, strong Cree capabilities, and Cree involvement in carrying out projects. Thus, one of its main pillars was the implementation of measures and structures that would make it possible to promote acceptability on a daily basis while placing particular emphasis on the individuals and representatives who would facilitate the running of these co-managed structures.

Lessons learned on how to achieve social license to operate for a project

52 Hydro-Québec considers the acceptability of its projects to be directly related to their impact-to-benefit ratio. The approach developed was based on a permanent, direct presence and the establishment of committees, as well as on the discipline related to the constant monitoring of relations and satisfaction levels.

Approach 1: Direct link between the bipartite committees and communities

53 The core of this approach related to the work of topic-specific committees, which fostered exchanges that made it possible to identify contentious issues and avoid possible conflicts. Throughout the process, we maintained direct, bipartite committees that benefitted both parties, as shown in the three examples that follow. The first is the joint Boumhounan Committee, which was set up for the impact assessment and improved both the climate of cooperation with stakeholders and the content of the studies, particularly those pertaining to mitigation and enhancement measures. This improvement constituted a positive result for the promoter. In addition, by participating in the studies, the Cree land users affected by the project gained a better understanding of its nature and scope and were able to propose appropriate mitigation measures with a view to preserving their traditional activities. This cooperation during the impact assessment process enabled the two parties to jointly hold public hearings in 2006 with full knowledge of the contents of the Environmental Impact Statement, as they were privy to the entire document. The second example is the Niskamoon Corporation, which has a representative (commonly known as the "Niskamoon representative") in each of the nine Cree communities. Named by the Band Council, the representatives are full-time employees who, like the Boumhounan representatives, have offices in their respective communities. These individuals act as liaison officers between the community and the Niskamoon Corporation. They may occasionally receive comments, complaints or grievances, which they forward to be addressed by the Monitoring Committee or the Niskamoon Corporation, as the case may be. The Monitoring Committee is made up of representatives (commonly known as "Boumhounan representatives") from the communities affected by the project. Named by the Band Council, these representatives are full-time employees with offices in their respective communities, who act as liaison officers between the community and the Monitoring Committee. As such, they are always available to receive comments, complaints and grievances from community members and forward them to be addressed by the Monitoring Committee, if required (see Niskamoon Corporation Annual Report 2014–2015: 25).

54 These committees have taught us the following: even though they represent a major time investment, these permanent committees make it possible to coordinate activities, maintain favorable relations and encourage attentive listening throughout all phases of the project. Their presence in each community fosters strong capillarity around issues affecting the community's individuals and groups, encourages rigorous follow-up of commitments and conversations, and prevents the creation of minor issues that can become bigger problems.

Approach 2: Permanent presence in the communities

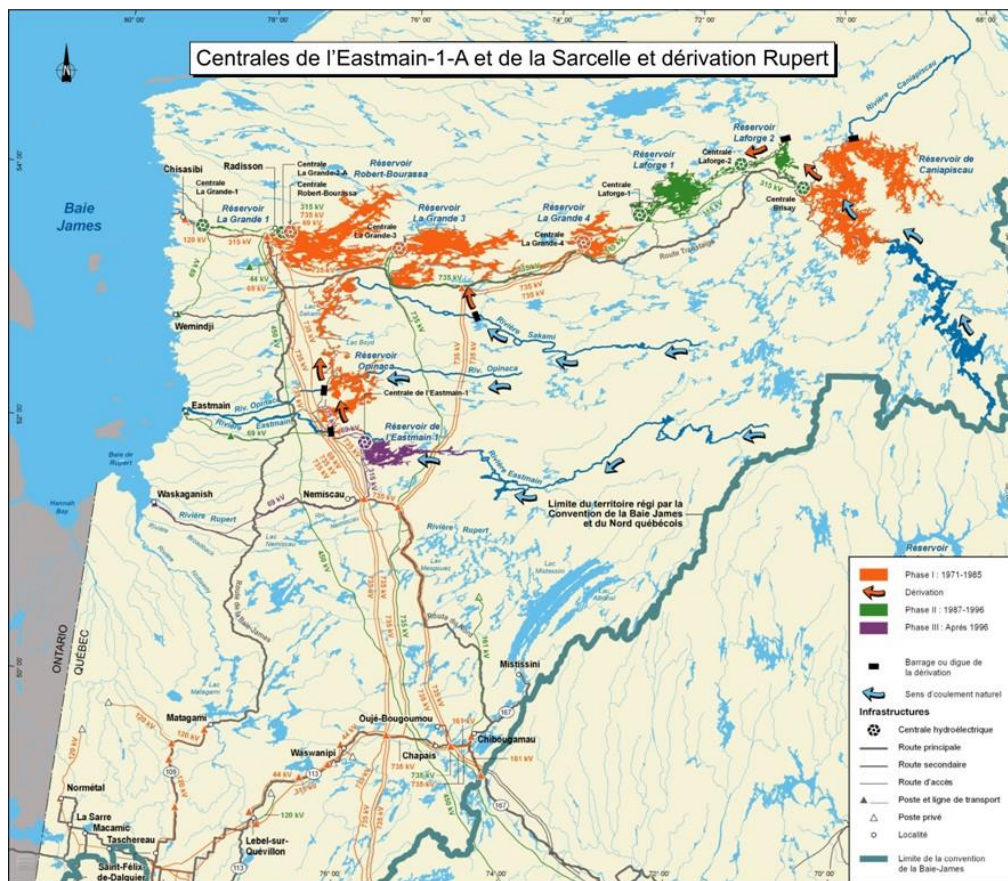
55 Hydro-Québec has offices in the project area and its personnel can also gather comments, complaints and grievances and forward them to the Hydro-Québec representatives on the Monitoring Committee, who will share them with the other Committee members for resolution, if required (see Niskamoon Corporation Annual Report 2014–2015: 25). Lastly, Cree and Hydro-Québec representatives on the Monitoring Committee regularly conduct a tour (at least twice a year) of the communities affected by the project and organize public and one-on-one meetings with the trapline tallymen directly concerned and their guests for the purpose of

gathering their comments, complaints and grievances and following up with them concerning the mitigation and enhancement measures that have been put in place to help them adapt to the project-generated changes.

Approach 3: Rapid response to complaints and grievances

56 It is important to address complaints and grievances quickly, support the Crees in their efforts to resume and continue using their land, and even recommend incentive measures they can implement to ensure continued use of the areas of the territory affected by the project. This mechanism enables stakeholders to measure the number and quality of the actions taken by Niskamoon, as they consider these to be good indicators of the acceptability of the project.

Appendix: Map of Baie-James and Hydro-Québec Hydroelectric Projects



Notes

1 Note on methodology: Both researchers proposed an initial outline of the narrative, to which both key players contributed, initially as responders. Subsequently, the practitioners significantly modified the narrative with contributions, clarifications and details from their direct experience with the issue. The two researchers who contributed to this article are interested in business–community relations and the social license to operate of projects. The practitioners, on the other hand, have solid experience in managing business–community relations. A member of the Cree Nation of Québec, Me. Murdoch is a former member of the Grand Council of the Crees (Eeyou Istchee) and currently holds the position of Secretary of the Cree Nation Government. Réal Courcelles works with Hydro-Québec hydroelectric development projects in the Baie-James region. He participated in the negotiation and application of several agreements between Hydro-Québec and the Crees and currently participates in a number of joint Cree–Hydro-Québec organizations and committees whose mandates include mitigating the adverse impacts of hydropower projects on Cree traditional activities and promoting the resumed use of affected areas.

2 *Débats de l'Assemblée nationale du Québec*, 35^e législature, vol. 34, n° 1, Première session p. 5-13 (1994).

3 Quote from David Boyd, Professor of Environmental Law at Simon Fraser University, Vancouver, BC, 2002.

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Réal Courcelles

Réal Courcelles holds a B.Sc. in biology and an M.A. in education from Université de Montréal, an M.Sc in biology from Université Laval and an M.B.A. from HEC. For the past four decades, he has worked with Hydro-Québec’s hydroelectric development projects in the Baie-James region. Mr. Courcelles participated in the negotiation and application of several agreements between Hydro-Québec and the Crees. He is also a member of many Cree–Hydro-Québec committees and joint ventures whose mandates include mitigating the adverse impacts of hydropower projects on the Crees’ traditional activities and promoting the resumed use of lands affected.

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Abstracts

Cet article porte sur la reconstruction des relations entre Hydro-Québec et la Nation crie de 1994 à 2015. En 1994, le report *sine die* du projet hydroélectrique de Grande-Baleine par le premier ministre Jacques Parizeau marque à la fois une « victoire » pour les Cries opposés à ce projet et le paroxysme du conflit entre ces derniers et Hydro-Québec. Par contraste, deux décennies plus tard, en 2015, les deux parties s'accordent à décrire comme *excellentes* et *constructives* les relations entre la société d'État et la Nation crie.

L'intérêt distinctif de cette contribution qui vise à analyser le processus de transition de rapport conflictuel à partenariat réside dans le fait qu'elle a été coécrite par deux des protagonistes, l'un d'Hydro-Québec, l'autre du gouvernement de la Nation crie, et par deux chercheurs, dans le but de favoriser une compréhension commune de ces événements. Cet effort « d'écrire l'histoire à plusieurs mains », au-delà des clivages passés et présents, représente un effort de synthèse qui vise à enrichir notre compréhension des processus et des démarches d'acceptabilité sociale.

This article focuses on the reconstruction of relations between Hydro-Québec and the Cree Nation during the 1994–2015 period. Premier Jacques Parizeau's 1994 decision to indefinitely suspend Great Whale—a major hydroelectric project—constituted a “victory” for the Cries opposed to this project and demonstrated the severity of the conflict between them and Hydro-Québec. Just two decades later, in 2015, both parties described their relationship as excellent and constructive.

The purpose of this article is to analyze the transition from a conflictual relationship to a harmonious one. The particular value of this article lies in the fact that it was co-written by two key players—one from Hydro-Québec and one from the Cree government—and two researchers with the intention of fostering a common understanding of these important events. This “co-writing of history” that goes beyond past and present divisions represents an integrative effort that aims to enrich our understanding of the processes and dynamics involved with a social license to operate.

Index entries

Keywords: Social license to operate, stakeholders, local communities, commitment, sustainable development, Hydro-Québec, Cree First Nation