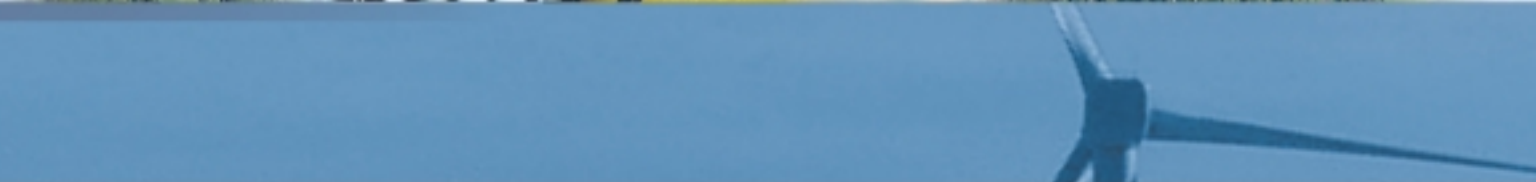



Des femmes, des hommes, des régions, **nos ressources...**



Québec 

**Granting of Waterpowers in the Domain
of the State for Power Stations
of 50 MW and Less**

Reference Guide for Local and Aboriginal Communities

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Message

In ensuring Québec's energy development, it is important to involve the local and regional communities concerned—especially the Aboriginal—in the various projects, while maximizing the benefits for the entire community and complying with the requirements of sustainable development.

The Québec government believes the time is right to allow interested communities to develop small private hydroelectric power stations. These projects can be carried out as long as they have the support of the community, generate benefits for the region, and come under community control. The *Reference Guide for Local and Aboriginal Communities* was developed to help them better understand the process for implementing power stations rated at 50 MW or less.

In *Québec Energy Strategy 2006-2015*, the Québec government confirmed its determination to be the government for the regions and to build strong cooperation with Aboriginal nations.

Minister of Natural Resources and Wildlife

Small Hydroelectric Power Stations: Driving Local Development

In May 2006, at the end of a vast consultation process initiated in November 2004, the Government made public its new energy strategy for 2006–2015 entitled *Using Energy to Build the Québec of Tomorrow*. This strategy lays out the objectives to be achieved and the actions to be taken over the next ten years related to energy issues.

In the case of hydroelectric projects of 50 MW or less whose waterpowers are in the domain of the State,¹ the Government allows interested local municipalities, MRCs, and Aboriginal communities (proponents) develop them if viewed as a promising opportunity in their region's socioeconomic development.²

A number of conditions must be fulfilled before construction of such projects can begin. These projects must:

- Be under the control³ of local or Aboriginal communities.
- Have the support of the local community.
- Have been the subject of an official consultation conducted by the Québec government (upon whom this obligation is incumbent) in the Aboriginal communities that might be affected, if applicable.
- Be in accordance with the other missions of the State.
- Constitute a source of benefits for the region.
- Participate in the purchase of energy from the electricity distributor.
- Be subject to applicable environmental processes and public hearings held by the Bureau d'audiences publiques sur l'environnement (BAPE).

This document describes the steps required to implement a small hydroelectric power plant in Québec and provides information to make the process clearer. In addition to this framework, municipalities, MRCs, and Aboriginal communities must comply with the legislation and regulations in effect, especially with respect to loans and lines of credit, selecting business partners, delegation of management, land-use planning, public consultation, and the environment. Furthermore, MRCs and municipalities are strongly encouraged to contact the Ministère des Affaires municipales et des Régions (MAMR) to understand and be familiar with the legal obligations pertaining to the establishment of electrical generating companies within the meaning of the *Municipal Powers Act* (MPA).

Given the significant amount of resources needed to respond to the requirements of the environmental assessment process, proponents are strongly advised to consult the Ministère du Développement durable, de l'Environnement et des Parcs (MDDEP) before initiating the authorization process. This will allow proponents to familiarize themselves with requirements and the scope of information to be provided as well as to best use the resources at their disposal.

Moreover, it should be noted that, under section 74.3 of the *Act respecting the Régie de l'énergie*, the purchase program provided for herein must be analyzed and approved by the Régie before it can be implemented.

1. Projects whose land and waterpowers required for hydroelectric development lie both in the domain of the State and the private sector are also dealt with in this guide.
2. Appendix 4 contains more details about the possibilities of and limits on municipality participation in hydroelectric projects of 50 MW or less.
3. Community control can take different forms within the business insofar as they hold a majority position in decision-making and that they give precedence to any project generating benefits for the region.

Step 1: Application for a Site Prefeasibility Opinion from MRNF

An MRC, municipality, Aboriginal community, or a group of these organizations can act as a proponent in developing a hydroelectric site in the domain of the State. Before mounting the project in detail, the proponent must request the Ministère des Ressources naturelles et de la Faune (MRNF) to provide a prefeasibility opinion about the project's compatibility with land uses in the territory. The proponent must submit a form for a opinion⁴ to the Direction de la production d'électricité,⁵ which is available on the MRNF Web site at <http://www.mrnf.gouv.qc.ca/energie/>.

When the proponent consists of at least one MRC and a municipality, the request for a prefeasibility opinion from MRNF must be accompanied by a resolution of the MRC or MRCs supporting the request. If the proponent consists of one or more MRCs or municipalities and if the project lies within territory claimed by one or more Aboriginal communities, the proponent must provide proof that any Aboriginal communities concerned have been informed about the project.

If the project comes under the control of one or more Aboriginal communities, any duly constituted band council concerned must issue a resolution in support thereof. Moreover, at this point, the Aboriginal community or communities need only have proof that the MRCs concerned have been informed about the project.

If the proponent is an MRC, municipality, and an Aboriginal community forming a partnership, resolutions must be submitted by the MRC and any band councils.

Furthermore, in the case of mixed sites (which involve a combination of land, waterpowers, or both essential to project implementation and in the domain of the State and in the private domain), the proponent's request for a prefeasibility opinion must be accompanied by written consent from each private owner affected as well as documentation necessary to demonstrate the validity of their property rights or all real rights to the satisfaction of the Ministère.

Step 2: Assessment Prior to Producing the Prefeasibility Opinion

In analyzing the request, the Direction de la production d'électricité (DPE) will consult government departments and agencies about the project's compatibility with other current and future uses of the territory to assess if a favorable prefeasibility opinion is possible. The MRNF and its partners will assess projects taking into consideration, in particular:

- Ownership of land and waterpowers
- Consequences for wildlife and the environment
- Heritage and cultural considerations
- Aboriginal concerns⁶
- Site's eligibility for the granting of waterpowers
- Compliance with the public territory allocation plan
- Optimizing the use of waterpowers and watershed management
- Hydroelectric development potential and compatibility with Hydro-Québec's current and future infrastructure and its management

4. Direction de la production d'électricité, ministère des Ressources naturelles et de la Faune, 5700, 4^e Avenue Ouest, bureau A-416, Québec (Québec) G1H 6R1.

5. A copy of the form appears in Appendix 2.

6. Official consultations may be required with one or more Aboriginal communities. If applicable, this shall be assumed by the Gouvernement du Québec, since this is one of its obligations.

The MRNF has a minimum of three months, from the date on which the request for a prefeasibility opinion is received, to consult its partners (in particular, Hydro-Québec, Aboriginal peoples, the Ministère de la Culture, des Communications et de la Condition féminine [MCCCF], MRNF, and the Centre d'expertise hydrique du Québec [CEHQ]) and then send a prefeasibility opinion to the proponent. **The proponent must carry out the following steps in order to receive a prefeasibility opinion from MRNF.**

Step 3: Preparing the Project Notice and the Other Required Documents

If, after receiving a positive prefeasibility opinion, the proponent wishes to develop the site, he must prepare a project notice and submit it to MDDEP. A project notice is a written document by which the proponent officially expresses his intention of carrying out the project. The project proposal⁷ describes the project's overall features. The information must be presented clearly and concisely, providing only those elements relevant to clear understanding of the project and its anticipated impacts. In particular, the project proposal must include the following:

- Project objectives and rationale
- Project location and land ownership
- Description of the project and its variants
- Setting components and the main constraints to project implementation
- Main anticipated impacts
- Project schedule
- If applicable, subsequent phases and related projects
- Terms for public consultation

In addition to a copy of the project notice, MRNF must receive documentation about the following:

- Application for an exploratory study on the cost of connecting to Hydro-Québec's TransÉnergie network
- Organization's ownership structure and selection of a private-sector partner
- Conditions governing site operation
- Method of consultation with local and Aboriginal communities and their outcomes
- Estimate of the economic benefits for the region

Application for an Exploratory Study on the Cost of Connecting to Hydro-Québec's TransÉnergie Network

The proponent must apply to Hydro-Québec TransÉnergie for an exploratory study on the feasibility of integrating the future electrical production into the grid. The cost of this exploratory study is set down in *Tarifs et conditions des services de transport d'Hydro-Québec* (Decisions D-2007-08 and D-2007-34, February 20, 2007 and March 30, 2007). As a guide, the 2007 cost for such studies was \$5,000.

7. Accessible at the MDDEP Web site: <http://www.mddep.gouv.qc.ca/evaluations/documents/Avisprojet-fr.pdf>.

Conditions Governing Site Operation

The proponent must establish the site's development conditions,⁸ particularly with respect to:

- Lump sums and annuities that would be paid out, for example, to local communities⁹ (including Aboriginal communities).
- Infrastructure, especially recreational/tourist, to be developed.
- Specific implementation conditions, including ecological or aesthetic flow rates and reserved flow rates.

Conditions Related to Selecting a Private-Sector Partner and Awarding Contracts by a Municipality or a Business Controlled by a Municipality

Municipalities must comply with certain rules in selecting a private-sector partner to operate a hydroelectric power plant. The *Municipal Powers Act* (MPA) provides for the municipality to have control of the business created for this purpose. Partners must be selected through a call for tenders issued by the municipality (sections 17.2 and 111.0.1 of the MPA). The MPA also stipulates that contracts entered into by this business shall be subject to calls for tenders (sections 17.3 and 111.0.2 of the MPA).

Nevertheless, insofar as the call for tenders complies with certain conditions, the electricity generating business to be created shall not be held to the tendering process when awarding construction or operation—wholly or in part—to its private-sector partner. Consequently, in order to produce such a turnkey project, the call for tenders shall:

- Conform to municipal regulations governing calls for tenders for construction contracts.
- Provide for measuring the municipality's financial participation.
- Provide for measuring the municipality's financial return for its participation in the project.¹⁰
- Provide for determining the technical features targeting project implementation and operation.

Nevertheless, for such turnkey projects, the business shall comply with the regulations applicable to municipal contracts for acquisitions, construction projects, and service provision when such have not been provided for in the call for tenders in selecting a private-sector partner (sections 17.3 and 111.0.2 of the MPA). These rules aim at ensuring healthy competition between contractors and suppliers.

The subsequent call for tenders and the calls for tenders must be published on an electronic tendering system accessible to all contractors in Canada¹¹ as well as in a print publication for all instruction, supply, or service contracts with a value of \$100,000 or more, unless the services provided exclusively by certain professional orders are subject to specific rules¹² (sections 17.2, p. 3 and 111.0.1, p. 3 of the MPA).

-
8. From the development standpoint, the MRC or local municipality can also set the conditions for site development.
 9. Lump sums and annuities that would be paid out, for example, to local or Aboriginal communities, could also be negotiated when the business is controlled by a municipality or an Aboriginal community.
 10. Financial performance includes all kinds of financial benefits paid out to the municipalities: dividends, voluntary contributions from proponents to municipality, etc.
 11. Only Ontario firms are targeted when the construction contracts are valued at from \$100,000 to \$250,000.
 12. In this case, the provisions under municipal legislation and the Regulation respecting the Awarding of Contracts for Certain Professional Services (R.R.Q., c. C.-19, r.0.1) must be complied with.

Appendix 3 gives an example of the criteria that can go into the call for tenders. The conditions of the call for tenders must be submitted to MRNF.

Furthermore, in the context of a partnership between a private-sector company and a municipality, it is important for the partners to put into place the means needed to ensure the greatest degree of transparency possible in their partnership activities in every aspect of operation of the new business, from creation of the partnership up to its evaluation (see Appendix 5).

Lastly, it is strongly recommended that municipalities who contemplate developing their waterpower potential for the purpose of generating electricity make formal commitments in the area of municipal ethics. These commitments can be codes, principles, or rules that provide guidance to their elected officials and their employees in decision-making so that they can better serve the public (see Appendix 5).

Specific Rule Applicable to an MRC That Wants to Operate a Hydroelectric Power Plant

An MRC that wants to operate a hydroelectric power plant must adopt a resolution indicating its intention. A copy of this resolution must be sent to each of the local municipalities within the MRC. The MRC cannot decide to operate the business within 45 days after submitting this resolution. A local municipality can inform of its withdrawal from the project by resolution. This can be done even after the 45-day period. This right of withdrawal must therefore be appropriately framed so that municipalities do not withdraw from the project when the MRC has undertaken significant financial commitments in this regard.¹³

Business Ownership Structure and Control

Québec's 2006–2015 energy strategy enables interested communities to develop small power plants insofar as they are supported by the community, generate benefits for their regions, and are under community control. For its part, the *Municipal Powers Act* provides for any local or regional municipality, either alone or with any other person, to operate a business that produces electricity with a hydroelectric power station. It further stipulates that this business must be under municipal control. Should a local or regional municipality operate a hydroelectric power station with another municipality or Aboriginal band council, the company must be controlled by one of the operators.

When one of the partners in the construction and operation of a hydroelectric power station is a private-sector company, the municipal and Aboriginal partners must be in a position to control the decisions of the Board of Directors of the business to which they belong. They must exercise effective, genuine control that enables them to determine the direction of decisions pertaining to all facets of the business's life. In cases involving a limited partnership, the municipal and Aboriginal partners must control the partnership decisions.

13. In such cases, withdraw can be exercised according to section 188 of the *Act respecting Land Use Planning and Development* (LUPD). The terms related to withdraw are provided for in sections 188.1 and 188.3 of the LUPD. As soon as it has been informed of the MRC's intention to operate such a business, the local municipality can adopt a resolution withdrawing from the project and serve notice of the same. It may so act subsequently, in which case, it would be subject to the rules established under bylaws adopted by the MRC under section 188.3 of the MPA and applied in compliance with the Act. The MRC may adopt this by law upon adoption of its resolution (provided for under section 111.1 of the MPA).

The proponent shall provide details of the ownership structure of the business that will build and operate the power plant. This information shall include:

- Legal form
- Breakdown of shareholders or contributions to the common fund
- Type of control exercised by each partner
- Letters patent, partnership agreement, shareholder agreement
- Any other pertinent document

Québec's energy strategy and the *Municipal Powers Act* provide that the company shall be under community control. The community must have effective control of the company. Limited partnerships, however, cannot comply with this requirement.

It should be noted that all the documents provided shall be treated confidentially in compliance with the provisions of the *Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information* (R.S.Q., c. A-2.1).

Outcomes of Consultations with Local and Aboriginal Communities

Once the development conditions have been established, the proponent must consult the local population, which means local and Aboriginal communities. A transparent, credible public consultation process, making it possible to determine community support, is required. The signing of registers or a referendum are examples of this. Where appropriate, the process should obviously comply with Québec provisions relating to public consultations in municipalities.¹⁴ With respect to Aboriginal communities, a public consultation or general meeting of the community can be held to enable members of the general public to share their concerns.

Estimate of the Economic Benefits for the Region

As mentioned in the Québec Energy Strategy, the Government is leaving interested local and Aboriginal communities free to develop small power plants of 50 MW or less, particularly if doing so generates benefits for their regions. Consequently, the proponents must submit an estimate of their project's economic benefits for the host region to MRNF.

14. The *Act respecting Land Use Planning and Development* provides for public consultations should implementing the project require amendment of the MRC's land use planning and development plan or municipal town planning. Public consultation is not necessary if the amendment to the planning bylaw is required by the land use planning and development plan. Municipalities may consult the public at any other time that they deem necessary. These public consultations should aim at reaching the largest number of residents possible and should not be held in a way that would exclude certain categories of people. Moreover, a municipality who finances its capital funding of a concern to generate hydroelectric power through a loan must obtain the approval of eligible voters with respect to this loan bylaw (section 1061 of the MCQ and section 556 of the CTA). This may also be the case for any financial commitment when the MAMR Minister requires the approval of eligible voters (section 14.1 of the MCQ and section 29.3 of the CTA).

Step 4: Submission of the Project Notice and Application for Granting of Waterpowers

When the proponent is ready to submit the project notice to MDDEP, he must send a copy to MRNF, along with the additional documents described in step 3 and a letter requesting the granting of waterpowers and the location of lands in the domain of the State.

Submitting the project notice to MDDEP initiates the environmental assessment procedure provided for in sections 31.1 and following in the *Environment Quality Act*. The proponent should have the MRNF letter of intent concerning the project in hand prior to beginning the environmental process (see Step 7).

Step 5: Project Analysis and MRNF Letter of Intent¹⁵

If, after analysis of the submission, MRNF deems that all the documents are compliant, MRNF will advise the proponent in writing of its intention to recommend to the Government to grant the necessary waterpowers and lands in the domain of the State, conditional upon all permits and authorizations required under applicable legislation and regulations being obtained. With this letter of intent, MRNF also requires submission of the Hydro-Québec TransÉnergie exploratory study on the costs of connection to the power grid.

For the proponent, the letter of intent is a key element in negotiating with creditors and the other partners involved in the project.¹⁶ Moreover, it allows the proponent to start working with Hydro-Québec TransÉnergie on establishing agreement for connection to the transmission grid, in compliance with dispositions in *Tarifs et conditions des services de transport d'Hydro-Québec* (Decisions D-2007-08 and D-2007-34, February 20, 2007 and March 30, 2007).

The proponent has 12 months from the date on which the letter of intent was sent in which to inform MRNF of his intention to move forward or not. This period of time can be extended for a maximum of 12 months with MRNF approval.

Step 6: Program for Purchasing Electricity by Hydro-Québec Distribution

In order to participate in the purchasing program, as provided for under section 74.3 of the *Act respecting the Régie de l'énergie*, amended in December 2006, the proponent must submit a letter demonstrating that an application for the granting of waterpowers in the domain of the State for the development site has been filed with MRNF. Indeed, the Government has mandated the energy distributor to establish an electricity purchasing program.

15. At this point, any municipality that wishes to finance its capital funding through a loan must comply with the requirements of municipal legislation. It must obtain the approval of the MAMR Minister and that of eligible voters. Any budgetary commitment by the municipality may be subject to prior authorization from the Minister, who can also require the approval of eligible voters. More details about the topic of loan bylaws and budgetary commitments can be found on the MAMR Web site: http://www.mamr.gouv.qc.ca/finances/fina_fina.asp.

16. In this regard, MRNF's Land and Mining sectors receive a copy of the letter of intent addressed to the proponent in order to preserve the site's use of waterpowers.

Through this electricity purchasing program, the Government intends to encourage development of small hydroelectric power plants rated at 50 MW or less and to maximize economic benefits as explained below.

- The program to purchase electricity from the distributor aims at supporting the development of small hydroelectric plants for the benefit of Québec regions.
- A small hydroelectrical power plant has been defined as:
 - Generating 50 MW or less and of which the water powers are wholly or partially in the domain of the State, which includes projects falling, at the same time, within the domain of the State and of the private domain. The Government leaves it to the discretion of interested municipalities and Aboriginal communities to pursue development if they feel that such projects represent promising opportunities for the socioeconomic development of their regions.
- In order to ensure optimal development of projects for small hydroelectric power stations that would benefit the regions, the Gouvernement du Québec believes that it is timely to implement a program to purchase the first block of 150 MW of electricity produced by community projects, establishing, in particular, competitively pricing, indexed annually, put into place by Hydro-Québec. The program must be submitted for approval to the Régie de l'énergie, as provided for under the *Act respecting the Régie de l'énergie*.

The projects presented under the framework of this program must also comply with the following:

- Be under the control of local or Aboriginal communities.
- Constitute a source of benefits for the concerned region.
- Receive a positive prequalification opinion from Government authorities.
- Have been the subject of a consultation with the population targeted by the project.
- Have the support of the local community.

Step 7: Environmental Authorization Procedure: Impact Study

The MDDEP is responsible for applying the *Environment Quality Act*. Submitting a project notice to MDDEP triggers the environmental assessment procedure provided for under articles 31.1 and following in the *Environment Quality Act*. After receiving a project notice, MDDEP sends the proponent guidelines that indicate the specific items to address in the impact study, particularly, the project's objective, its variants, descriptions of the biophysical and human settings, project impacts, anticipated mitigating action, emergency measures, and monitoring and follow-up programs. The impact study must contain all the information requested by MDDEP, which will then determine its acceptability.

Once the impact study has been deemed acceptable by MDDEP, the file is made public for a period of 45 days, during which an individual, group, or municipality can request the MDDEP Minister to hold a public hearing. Public hearings concerning the project will be held by BAPE if at least one such request¹⁷ is received by the minister during the consultation period.

The MDDEP will use the information contained in BAPE report and the environmental analysis report to analyze the project and make a recommendation to the Government. The Government will render its decision as a decree: it will either authorize the proponent to move ahead with or without amendments or conditions to the project, or the project will be denied. In the case of projects

17. A public hearing is not required if the request is deemed irrelevant.

subject to Government authorization, the MDDEP's Direction des évaluations environnementales will issue one or more certificates of authorization pertaining to the structures and their commissioning.

Step 8: Environmental Authorization Procedure: Certificates of Authorization

When the proponent has obtained a certificate of authorization under sections 31.1 and following of the *Environment Quality Act*, he must also submit an application for a certificate of authorization with the regional office of the MDDEP concerned. This application concerns certain aspects of the work under regional jurisdiction related to section 22 of the *Environment Quality Act*, particularly dispositions pertaining to drinking water, waste water, and residual materials.

Step 9: Authorization Procedure under the *Dam Safety Act* and Approval Procedure for Plans and Specifications under the *Watercourses Act*

Concurrent to applying for certificates of authorization, the proponent of a project for a small hydroelectric power plant requiring construction or modification of a dam must submit the plans and specifications for such operations to the Centre d'expertise hydrique du Québec to obtain authorization under the *Dam Safety Act*. Moreover, the dam plans and specifications must be approved by government decree as provided for under the *Watercourses Act*. The proponent's application must be accompanied by the following:

- Plans and specifications
- Hydrology and hydraulic studies
- Dam stability study, including seismic studies in certain cases
- Recommendations from an engineer about the consequences should the structure fail
- Impounded water management plan and emergency action plan, if applicable

This list is not exhaustive. The Centre d'expertise hydrique du Québec should be contacted for any additional information.

Step 10: Leasing of Waterpowers and Lands in the Domain of the State

In addition to the government authorizations referred to in steps 8 and 9, the proponent must complete a number of other steps prior to signing a contract for leasing waterpowers and lands in the domain of the State. They are carried out at the same time as steps 8 and 9. It must be noted that the granting of waterpowers cannot be finalized until all of the government authorizations have been obtained.

- Signature of the contract for purchasing electricity and the connection agreement with Hydro-Québec
- Negotiation of the lease for waterpowers and lands in the domain of the State with MRNF and MDDEP
- Upon recommendation by MRNF and MDDEP, authorization by Government decree granting waterpowers and lands in the domain of the State, as well as approval of plans and specifications under the *Watercourses Act*.
- Any other authorization under legislation and regulations in effect, whether federal, provincial, or municipal.

Signature of the contract granting waterpowers and lands in the domain of the State, as the result of government decree, is the last step in the process.

The main terms and conditions applicable to leasing waterpowers and lands in the domain of the State required for developing and operating a small hydroelectric power plant are given in Appendix 5.

Once the lease has been signed, the proponent, who then becomes the lessee, has all of the documents and authorizations required to commence construction and operation of the power plant in accordance with government conditions. He must also obtain the required municipal building permits.

APPENDIX 1

Summary of the Process for Granting Waterpowers

Step 1: Application for a Site Prefeasibility Opinion from MRNF (preparation and submission)
Step 2: Assessment Prior to Producing the Prefeasibility Opinion Opinion of the departments and agencies involved (in particular, MRNF, CEHQ, MCCCCF, and Hydro-Québec) about the following: <ul style="list-style-type: none">• Ownership of land and waterpowers• Wildlife and environmental aspects• Heritage and cultural considerations• Aboriginal concerns (If official consultation with one or more Aboriginal communities is required, it shall be assumed by the Gouvernement du Québec, as one of its obligations.)• Site eligibility for the granting of waterpowers and compliance with the public territory allocation plan• Validation of the potential for hydroelectric development and compatibility with Hydro-Québec's current and future infrastructure and its management After assessing the comments received, MRNF determines whether or not to issue a favorable prefeasibility opinion.
Steps 3, 4, and 5: Preparation and submission of a project notice and other documents required by MRNF, in particular: <ul style="list-style-type: none">• Application for a study for connecting to Hydro-Québec's TransÉnergie network• Conditions governing site operation• Ownership structure and selecting a private-sector partner (call for tenders in compliance with the <i>Municipal Powers Act</i>)• Outcomes of consultations with local and Aboriginal communities• Estimate of the economic benefits for the region• Letters patent, partnership agreement, corporation's shareholder agreement When MRNF is satisfied with the project, it produces a letter of intent.
Step 6: Program for Purchasing Electricity by Hydro-Québec Distribution
Step 7: Environmental authorization procedure - impact study and public hearing to obtain environmental authorizations
Steps 8 and 9: MDDEP authorization and Government decrees (environment, waterpowers, plans and specifications)
Step 10: Leasing waterpowers and lands in the domain of the State (negotiation of lease with MRNF)
Construction and commissioning

APPENDIX 2

Form for Requesting a Prefeasibility Opinion



FORM FOR REQUESTING A PREFEASIBILITY OPINION

Application for a Prefeasibility Opinion on a Proposed Hydroelectric Power Plant of 50 MW or Less

1. DATE OF APPLICATION FOR OPINION

DAY MONTH YEAR

2. LOCAL OR ABORIGINAL COMMUNITIES INVOLVED – PROJECT PARTNERS (ADD COPIES, IF NECESSARY)

2. LOCAL OR ABORIGINAL COMMUNITIES INVOLVED – PROJECT PARTNERS (ADD COPIES, IF NECESSARY)		
Authorities	Authorities	Authorities
Representative's name:	Representative's name:	Representative's name:
Postal address:	Postal address:	Postal address:
Telephone:	Telephone:	Telephone:
Fax:	Fax:	Fax:
E-mail:	E-mail:	E-mail:

APPENDIX 2

Form for Requesting a Prefeasibility Opinion (cont'd)

3. SITE IDENTIFICATION (RESPOND TO THE NEXT TEN QUESTIONS)		
A) Name of site (if applicable):	B) Name of watercourses or lake: DISTANCE FROM MOUTH:	C) Name of locality or unorganized territory:
D) REGIONAL COUNTY MUNICIPALITY (MRC) Does the site border on an other jurisdiction? MRC <input type="checkbox"/> PROVINCIAL <input type="checkbox"/> FEDERAL <input type="checkbox"/> AMERICAN <input type="checkbox"/>	E) County : F) CADASTER: TOWNSHIP <input type="checkbox"/> PARISH <input type="checkbox"/>	G) Range: H) LOTS: I) OTHER GEOGRAPHIC COORDINATES : LATITUDE: LONGITUDE: OTHER:
J) Is there already a dam or will one be built at the site? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, provide the dam number ¹⁸ :		
4. Output of the proposed facility		
In megawatts (MW): Other technical details:		
5. CONSENSUS OR SUPPORT OF THE COMMUNITY		
OF THE CONCERNED MRC Yes <input type="checkbox"/> No <input type="checkbox"/>		
OF ABORIGINAL COMMUNITIES CONCERNED Yes <input type="checkbox"/> No <input type="checkbox"/>		
COMMENTS:		

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18. See the Centre d'expertise hydrique du Québec directory at: www.cehq.gouv.qc.ca/barrages/default.asp

APPENDIX 3

Suggested Criteria for the Call for Tenders

EXAMPLES OF CRITERIA FOR THE CALL FOR TENDERS TO SELECT A FINANCIAL PARTNER FOR THE PROJECT

- Proponent's capacity to carry out the project:¹⁹
 - Financial soundness
 - Feasibility of the proposed development
 - Relevant experience
 - Other
- Project's technical features:²⁰
 - Cost of electricity production
 - Compliance with setting criteria:
 - Infrastructure, especially recreational/tourist, to be developed
 - Specific implementation conditions (such as ecological, aesthetic, and navigational flow rates)
 - Project insertion into the community:
 - Site optimization (power or electricity generated annually)
 - Sustainable development
 - Recreational and tourism benefits
 - Other value-added elements
- Municipal financial involvement in the project²¹
- Municipality's return on investment in the project:²²
 - Dividends to be paid out
 - Scenarios based on selling price to Hydro-Québec
 - Lump sums or annuities paid out to municipalities or MRC
 - Voluntary contributions from proponents
 - Other

19. This criterion figures in the call for qualifications, if applicable.

20. This criterion figures in the call for proposals.

21. This criterion figures in the call for proposals.

22. This criterion figures in the call for proposals.

APPENDIX 4

Free translation of citation from the newsletter Bulletin Muni-Express 2006, no. 6, July 11, 2006²³

HYDROELECTRIC POWER

Any municipality can now operate a company that produces electricity with a generating station, either alone or with any other municipality, Aboriginal community, private-sector business, and the like. Local municipalities with an MRC's territory can do likewise, with the MRC's approval.

As in the case of wind energy, the requirement to form a limited partnership to operate such power plants has been lifted. Moreover, municipal financial involvement—which can take different forms—is no longer limited to half of the funds required, as it was in the past. The small, municipal-operated in generating stations must however remain under the control of the community. This means under the control of the municipality, band council, or both. In order to achieve this goal, the municipalities and band councils must make sure that they controlled the decisions about operating the business, such as by holding the majority of voting shares in a company set up for this purpose or by appointing the majority of the members of the board of administration of a moral person dedicated to this purpose. As a result, a majority financial position is no longer deemed essential to be considered to have control of a small hydroelectric generating station. It depends on how the company is operated. As for limited partnerships, those created prior to Bill 21 coming into effect can remain under private-sector control.

In terms of investment limits, the total financial involvement and sureties provided by a municipality cannot exceed the amount required to set up a 50-MW power plant. This limit corresponds to the maximum capacity of generating stations that could be operated by the municipalities. The energy strategy provides only for the development of small hydroelectric power plants, which means those rated at 50 MW or less. Consequently, municipalities will be able to entirely finance any small hydroelectric power plant, conditional upon obtaining the required approvals and authorizations, especially with respect to loans.

Other Dispositions

Approvals and Authorizations

The dispositions pertaining to approvals of eligible voters and to the ministerial authorizations required for municipal loans and suretyships remain applicable as they pertain to financing the involvement of municipalities in energy production. Consequently, in the case of a local municipality, the loan bylaw must be submitted for the approval of eligible voters and for the approval of the Minister of Municipal Affairs and Regions. The decision authorizing suretyship is subject only to authorization by the MAMR minister, who must nonetheless request the municipality to first submit the municipal decision approving the eligible voters (section 17.4 of the MPA). In the case of an MRC, only authorization by the MAMR minister is required for loans or suretyship. The MAMR minister can nevertheless order the regional county municipality to submit the bylaw for approval to the qualified voters in the local municipalities that must contribute to the payment of the expenditures (section 1061 of the Municipal Code of Québec (MCQ) and section 111.2 of the MPA). In all cases, the MAMR is responsible for ensuring that the municipality can respect its financial commitments to its creditors.

23. This appendix is a copy of the *Muni-Express* newsletter of July 11, 2006, prepared by the Ministère des Affaires municipales et des Régions and accessible at:
http://www.mamr.gouv.qc.ca/publications/muni_expr/2006/MX2006_No6_pl21_prod_elec.asp.

MRC Resolution of Intention

As required by legislation prior to the amendments made to Bill 21, an MRC that wishes to operate a business to produce electricity must pass a resolution announcing its intention to do so. Notice of this resolution must be given to each of the local municipalities within the MRC. The MRC may begin operating the business no earlier than 45 days after serving the resolution announcing its intention. This time period in no way limits the right of withdraw of local municipalities, which can be exercised at any time.

Call for Tenders

Insofar as the business for producing electricity is under municipal control (for example, if one or more municipalities hold the majority of voting stock in a corporation formed to operate the business), the local municipalities and MRC must issue a call for tenders to operate it with a private-sector company (sections 17.2 and 111.0.1 of the MPA). It could be said that a company for generating electricity is under municipal control if, for example, one or more of the municipalities hold the majority of voting stock in a corporation formed to operate the business.

The call for tenders must be published on an electronic tendering system accessible to contractors and in a local newspaper. Potential candidates must demonstrate their experience and main achievements pertaining to providing goods and services related to electrical generation. Moreover, the rules for awarding contracts provided for in municipal legislation and bylaws shall be complied with when the facilities or power plant are under municipal control (sections 17.3 and 111.0.2 of the MPA).

Expropriation

Government authorization must be granted for a municipality to expropriate private property to operate a business to generate electricity with a wind farm or hydroelectric power plant (section 1104 of the MCQ and section 571 of the CTA).

This newsletter is published by the Service des affaires institutionnelles et à la clientèle of the Direction des communications in the Ministère des Affaires municipales et des Régions.

APPENDIX 5

Ethical and Transparency Issues

Québec Energy Strategy 2006-2015, presented on May 4, 2006, allows local and Aboriginal communities to develop small hydroelectric power plants rated at 50 MW or less. The Government specifically indicated that these projects shall be developed by and for local communities. The *Municipal Powers Act* provides for the creation of businesses under municipal control in which the local or regional municipality would be associated with a private-sector company to produce electricity. Establishing this kind of project means that elected municipal officials have to take on new responsibilities.

In this context, the public institutions must, in order to preserve public trust, observe certain fundamental principles such as serving the public interest, demonstrate transparency, ensure public control, promote individual responsibility and setting a personal example, and foster a public-service culture that does not tolerate conflicts of interest.²⁴

Ethics

With respect to ethics, OECD²⁵ indicates that most public administrations adopt guidelines that are reflected in their policies and practices in order to avoid elected officials and public servants from being placed in situations of actual or apparent conflict of interest. A “conflict of interest” is a situation in which an elected official or public servant has personal interests that could unduly influence the way in which he or she carries out his or her official obligations and duties.

Some Québec municipalities have already made formal commitments in terms of municipal ethics in the form of codes, principles, or rules that guide their elected officials and employees in their decisions so that they can better service the public. These practices, often inspired by the objectives targeted under the *Act respecting Elections and Referendums in Municipalities* (ERMA), deserve to serve as models. Consequently, it is strongly recommended that municipalities who plan to develop their waterpower potential to generate electricity adopt such instruments.

Moreover, it should be remembered that ERMA comes under the legal framework designed to prevent elected officials from finding themselves in situations where they must choose between their personal interests and that of the municipality. The provisions of this legislation concerns, in particular, disqualification of a council member who knowingly violates the obligation to disclose his or her financial interests, who knowingly has a direct or indirect interest in a contract with the municipality, or who has entered into malfeasance, breach of trust, or other misconduct. These provisions could find application due to the specific situation of an elected municipal official (for example, ownership of the land targeted by the project, his or her serving on the board of directors of the private-sector partner, etc.).

In the case of a municipality acting as the main partner in developing its territory’s hydroelectrical potential, the elected officials must demonstrate sensitivity to the reality of the administrative situation awaiting them so that they can better define the risks related to possible conflicts of interest between the role of municipal elected official and the role of member of the board of directors of the company created to generate electricity. Elected officials must avoid placing themselves in a

24. For more information, refer to Yves Boisvert and Allison Marchildon, «Pour une saine gestion des enjeux éthiques découlant des partenariats privé-public» in *Les défis du partenariat dans les administrations publiques. Un regard systémique – théorie et pratique*, under the direction of Michel Boisclair and Louis Dallaire, Québec, Presses de l’Université du Québec, p. 57–82.

25. OCDE, *Gérer les conflits d’intérêts dans le service public – lignes directrices de l’OCDE et expériences étrangères*, Paris, 2005, 272 pages.

situation in which the benefits they receive from the company could give the appearance that they are placing the company's interests ahead of those of the municipality. By adopting practices that are stricter than the letter of the law or possible municipal statements on managing conflicts of interest and by setting therefore an example of exemplary behavior, elected officials can ensure they enjoy substantial credibility with municipal residents.

Lastly, in terms of ethics, it is important to remember that the mayor and elected municipal officials answer first and foremost to municipal residents. They must also maintain their independence from the private-sector partner and must not accept any personal benefit or advantage from the partner. In conclusion, we can say that, for an elected official, the appearance of a conflict of interest is often just as damaging as an actual conflict of interest.

Transparency

When setting up a partnership between a private-sector business and a municipality, it is important to take into account the distinctive natures of the participating organizations, especially with respect to managing information for shareholders, on one hand, and municipal residents, on the other. Consequently, it is important for the partners to put into place the means needed to ensure the greatest transparency possible in their partnership activities in all aspects of operating the new business, from creating the partnership up to its evaluation. In fact, municipality residents and all other members of the community have an interest in partnerships agreements entered into by elected officials on their behalf.

In the normal course of things, these principles should be reflected in the governance style adopted by the municipality, which must, in particular, advocate transparency and disseminate relevant information when giving accounts to residents.

It should be recognized, moreover, that the legislation governing municipalities provides very broad access to documents that belong to municipal records (sections 93 and 114.2 of the CTA, and sections 208 and 209 of the CMQ). Furthermore, the municipalities are subject to application of the *Act respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* (R.S.Q., c. A-2-1), which entrusts the principle of access to documents held by a government agency in the performance of its functions. Nevertheless, with respect to information that can have an economic impact related a company with which the municipality has entered into an agreement pertaining to exercising one of its powers and in which the municipality is a shareholder, the *Access Act* grants the municipality the discretionary power to withhold certain information or to require it to do so in certain specific cases (sections 21 through 27).

This legal framework cannot be set aside by agreements entered into by municipalities for documents that they hold in the performance of their functions.

Consequently, while a municipality may have access to information that might have economic impact for the purposes of its partnership in the development of its territory, the municipality cannot evade its obligation for transparency and must comply with existing legislation and accepted principles in this regard.

APPENDIX 6

Main Terms and Conditions Applicable to Leasing

Contract to Purchase Electricity

- The proponent shall have signed a contract with Hydro-Québec to purchase electricity conditional upon obtaining all authorizations required.

Leasing in the Domain of the State

- The proponent must send the department a copy of all government authorizations and acquisitions of property rights and all other real property.
- The land and waterpowers in the domain of the State required for operation will be leased for a period of 20 years. This lease can be renewed for a period of 20 years in accordance with conditions set by the Government.
- The proponent must, at his own expense, submit a plan drawn up by a surveyor to MRNF showing, in particular:
 - Normal operating elevation measured at the dam.
 - Flood protection area equal to a 100-year flood or any other impact on shoreline property due to a water management plan and any other local conditions, such as waves and erosion.
 - The rights in the domain of the State, Hydro-Québec, and other land owners required to develop and operate the small hydroelectric power plant.
- At his own expense, the proponent must examine property deeds for illegal occupation, cadastral discrepancies, and any other anomaly that could affect the properties.
- Any proponent acquisition from any owner of property or real rights required for developing and operating the small power plant shall be at his expense.
- The leasing of waterpowers and the assignment of other rights belonging to the domain of the State that are required to develop and operate the small hydroelectric power plant are conditional upon:
 1. Proof of partnership, decision-making structure, and shareholder breakdown between community authorities, the private-sector partner and other partners, if applicable, constituting the proponent, and demonstrating, to the ministers' satisfaction, that the community has effective control.
 2. At the term of the lease, or its termination or cancellation, transfer from the proponent to the government of all land or real rights required for operation as well as all hydraulic and electrical structures and equipment erected on this land.

This lease is authorized by the Government in accordance with the *Watercourses Act* (R.S.Q. c. R-13) and the *Act respecting the Lands in the Domain of the State* (R.S.Q. c. T-8.1) after obtaining the authorization certificate under the *Environment Quality Act* (R.S.Q. c. Q-2), the approval of plans and specifications under the *Watercourses Act*, and any other authorization from the Minister. The lease should conform to a typical lease.

- Any electricity produced by the small hydroelectric station that is not consumed by the producer for the purposes of the station must be sold to Hydro-Québec.
- Upon signing the lease, the proponent shall pay the MRNF Minister a lump sum set, in 2008, at \$12,003 per installed MW.

- The annual amounts paid by the proponent as rent, corresponding to the property and land rights of the waterpower or land of the State and affected by the development and operation of a small hydroelectric power plant shall be set in accordance with the *Regulation respecting the Leasing of Land in the Public Domain for the Building, Operation and Maintenance by Private Producers of Hydroelectric Power Plants Having a Capacity of 25 MW or Less*, enacted by Order in Council 1317-90.
- The proponent shall pay the MRNF Minister the charge provided for in Division VIII of the *Watercourses Act*. In 2008, this charge amounts to \$2.77 per MWh.
- An annual contractual charge, set in 2008 at \$0.652 per MWh produced, shall be paid by the proponent starting on the commissioning date of the small hydroelectric power plant.
- The proponent shall file with the MRNF Minister, no later than March 1 of each year, a written report on his production covering the period from January 1 to December 31 and payment of applicable charges.
- The lump sum, annual costs, and charges are indexed on January 1 of each year according to the percentage of increase, in relation to the preceding year, in the Consumer Price Index for Canada, as published by Statistics Canada.
- The proponent shall pay all taxes, fees, and other charges that may be imposed on the rights granted and lands leased during the term of the lease.
- The proponent shall ensure that the facilities are properly maintained and that the small power plant is operated properly during the term of the lease.
- Prior to construction, the proponent shall deposit a surety of due and complete performance, as a guarantee, in an amount equal to 10% of the development costs of the proposed project and that takes into account modifications authorized by the ministers (MDDEP and MRNF).
- The proponent shall obtain an insurance contract and maintain it during the entire term of the lease according to the provisions therein. The coverage under this insurance contract shall include:
 - Third-party liability covering the development and operation phases of the small hydroelectric power plant.
 - Insurance guaranteeing that the premises shall be restored to their former state should the lessee cease operations or enter bankruptcy.
 - General liability insurance.
- The proponent shall provide the Ministers (MDDEP and MRNF) with an insurance certificate stating that the coverage specified in the lease has been obtained. Subsequently, the proponent shall provide certificates of policy renewal, or new policies, as the case may be, within 10 days of their effective dates.
- For the purposes of calculating charges, the proponent must keep and maintain records providing the monthly records of generator output meters (gross output).
- The proponent shall respect all operating conditions specified in the lease, such as the normal operating elevation and the flood protection elevation, and shall take all actions necessary for this purpose.
- Conditional upon the rights that have been granted, the proponent is responsible for any damage caused to private property or to the domain of the State attributable to work for developing or operating the small hydroelectric power plant. The proponent shall, upon request of the MRNF Minister, produce surveying documents concerning the immovable affected according to the instructions and to the satisfaction of the Bureau de l'arpenteur général du Québec.

- Such rights may be revoked if the proponent fails to comply with his obligations.
- At the term of the lease, the Government shall take back the rights mentioned in the lease. Moreover, the Government shall, without compensation, assume ownership of the land and real rights acquired in the development and operation of the small hydroelectric power plant as well as all facilities, structures, equipment, and other improvements serving for the utilization of the leased waterpowers.

The Government, however, may renounce this at any time prior to the term of the lease. In that instance, the proponent shall remain responsible, until the term of the lease, for the maintenance of structures in accordance with the approved plans and specifications. Should the proponent fail to do so, the Government may require the demolition of any structures and the restoration of the premises to its former condition at the proponent's expense.

- From the lease's signing date, the proponent has three years, in the case of a disused site, and five years, in the case of an undeveloped site, to commission the site for commercial production.
- The proponent shall be responsible for any administrative fees or charges related to the lease.
- Any amendments to the granted authorizations are subject to new authorization by the Ministers (MDDEP and MRNF), depending on which has jurisdiction. The surveying documents required by such amendments must conform to the instructions and meet the satisfaction of the Bureau de l'arpenteur général du Québec.
- The proponent commits to allowing access to his accounting books and inventory records for auditing by any person so designated by the Ministers (MDDEP and MRNF).
- The proponent commits to allowing access to the sites and facilities for the purposes of inspection by any person so designated by the Ministers (MDDEP and MRNF).
- The provisions in this guide about the proponent's charges and obligations shall not exempt him from the requirements of the *Dam Safety Act*.
- The proponent commits to the effective control of the company vesting with the community. Modifications or amendments to the company's structure are subject to prior authorization by the ministers and shall not have the effect of removing the control exercised by the community.

LIST OF ACRONYMS

BAPE:	Bureau d'audiences publiques sur l'environnement
MAMR:	Ministère des Affaires municipales et des Régions
CEHQ:	Centre d'expertise hydrique du Québec
DPE:	Direction de la production d'électricité
MCCCF:	Ministère de la Culture, des Communications et de la Condition féminine
MDDEP:	Ministère du Développement durable, de l'Environnement et des Parcs
MRC:	Regional county municipality
MRNF:	Ministère des Ressources naturelles et de la Faune

DEFINITIONS

Aboriginal community:

Group of Aboriginal individuals represented by a band council in accordance with the *Indian Act*.

Lessee:

Company (proponent) that signs a contract to lease waterpowers and other rights in the domain of the State.

Mixed site:

Site whose land and waterpowers required for hydroelectric development lie both in the domain of the State and the private sector.

MRC:

Regional county municipality. It brings together municipalities of different sizes and may contain a territory that is not a local municipality and which is referred to as an unorganized territory. The MRC assume many responsibilities and jurisdictions related to management, city planning, and management of regional watercourses.

Municipal authorities:

Municipal authorities: Municipal or MRC councils comprised of representatives elected by the population. They make decisions about the municipality's or MRC's directions and priorities, and administer their business.

Proponent:

Business enterprise, controlled by the local or Aboriginal community, that is authorized to conduct business in Québec and wants to use waterpowers in the domain of the State to generate electricity with a small hydroelectric power plant.

Régie de l'énergie:

The Régie de l'énergie is an economic regulatory body mandated to reconcile public interest, consumer protection, and a fair return to electricity carriers and distributors. It fosters satisfying energy needs within a perspective of sustainable development as well as fairness for the individual and community.

Small power plant:

Hydroelectric power plant with installed power of 50 MW or less.

Under community control:

Legal control,²⁶ exercised by one or more local authorities (municipality, MRC, or Aboriginal community), of the business created to exploit the waterpowers. This control must remain in effect throughout the project's entire duration.

26. It should be noted that the majority rules vary slightly depending on whether the company is incorporated under the *Company Act* (Québec) or the *Canada Business Corporations Act*.



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