

REPORT:

**The Leasing of Kahnawake Land for a 315 kv Power Transmission Line
(Line 1)**

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for the Mohawk Council of Kahnawake
June 1997**

REPORT

**THE LEASING OF KAHNAWAKE LAND
FOR A 315 KV POWER TRANSMISSION LINE (LINE 1)**

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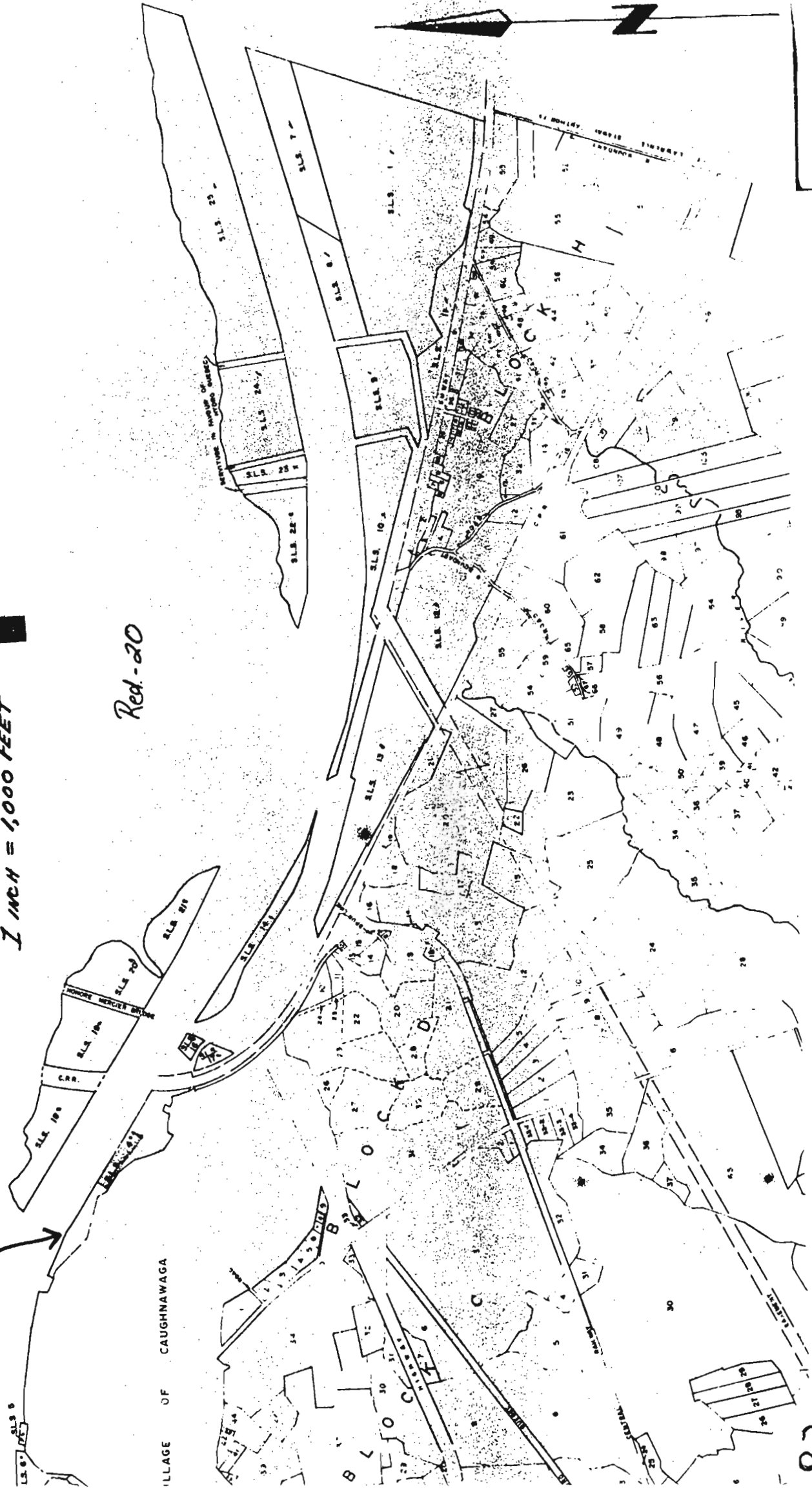
INCHES



1 INCH = 1,000 FEET

Red-20

SLS 4



2F

2

CHRONOLOGY OF EVENTS

THE LEASING OF KAHNAWAKE LAND FOR A 315 KV POWER TRANSMISSION LINE (LINE 1)

ABBREVIATIONS:

ADM	Assistant Deputy Minister of Indian Affairs
BCR	Caughnawaga Band Council Resolution or Resolution of Mohawk Council of Kahnawake (an <u>MCR</u>)
DIA	Department of Indian Affairs
H-Q	The Québec Hydro-Electric Commission
IR	Caughnawaga Indian Reserve No. 14
MCK	Mohawk Council of Kahnawake (formerly Caughnawaga Band Council)
OC	Order-in-Council
PC	Privy Council
QLS	Quebec Land Surveyor
r/w	right-of-way
SG	Surveyor General
SLSA	The St. Lawrence Seaway Authority

- 1955-1956** OCs pass in September 1955, February 1956 and October 1956 authorizing taking of about 1,350 acres of IR land for construction of St. Lawrence Seaway. During planning stages, MCK passes resolution that any lands not used for seaway purposes should be returned to reserve status.
- 1964-1965** SLSA, DIA and MCK have discussions about returning lands surplus to needs of SLSA to IR status. SLSA indicates that lands on north side of canal will not be returned. They explain that they have made a commitment to Province of Quebec in relation to a proposed hydro development on the Lachine rapids which may flood lands on north side of canal. As a result, MCK puts forward position that SLSA could only take lands for seaway purposes and does not have right to turn lands over to province.
- 1966**
September OC passes whereby about 250 acres, being SLS lot numbers 1, 2 and 3, are transferred from SLSA to DIA.
- 1970** H-Q plans a 315 kv line which will enter eastern boundary of Kahnawake lands which were expropriated by SLSA, run along south side of navigation canal, then cross over canal and the St. Lawrence River.
- 1971**
June 12 BCR passes resolving to approve H-Q erecting the 315 kv power transmission line on approximately "18 acres of land in the Caughnawaga Reserve and adjacent thereto".
- 1972**
May 12 Permit executed by MCK and H-Q whereby H-Q permitted to use and occupy part of IR "together with land in respect of which the Band has interests and rights for the purpose of erecting towers and power lines." Lands are described as the parcels etched in red and green on Plan 0431-60102-005-01-0-TR-S of March 1970.¹ Permit is for 50 year term, at annual rental of \$8000, the rental to be revised after 25 year period. Permit states that Minister of Indian Affairs is granting H-Q right to use and occupy lands under Sec. 28(2) of Indian Act; however, Minister does not sign agreement. *The permit covers lands which were not part of IR at that time.*
- June 16 DIA Admin. Officer at Caughnawaga sends permit to Land Transaction Section, DIA, and recommends its acceptance.
- June 27 Legal counsel for MCK writes ADM of DIA inquiring whether agreement approved.

¹ It should be noted here that although the permit refers to lands etched in red and green on plan 0431-60102-005-01-0-TR-S of March 1970, it is unclear why the lands etched in red (being the northern half of the 315 line) would be included in the permit between MCK and H-Q. The lands etched in red lie within the SLSA's minimum 100' allowance on south shore of seaway canal. In December 1972, SLSA gives H-Q a licence to erect and maintain the 315 kv line on this "red" portion.

- July 6 SG issues instructions to C. L. Mercier, QLS, to survey SLS lots 7 to 15 inclusive. Mercier told to survey the power line r/w shown on plan forwarded with instructions (not 315 kv line but rather two 120 kv lines known as Line 2).
- July 24 ADM of DIA informs MCK legal counsel that "Right-of-Way Agreement" forwarded for approval in June cannot be executed by DIA. Reasons given include that it grants rights over lands which are not yet part of IR and also crosses over lands which SLSA plans to convey to H-Q. Portion of land etched in red on Plan 0431-60102-005-01-0-TR-S of March 1970 referred to in permit will remain SLSA land.² The r/w granted by permit should be surveyed under SG's instructions but this cannot be done until lands conveyed by SLSA.
- October 30 ADM notifies MCK legal counsel that he approves "in principle", on behalf of Minister, "the transaction anticipated by this agreement. It is understood that formal completion will not take place until the plan of survey and suitable description of the lands affected have been registered."
- November 17 Lands Transaction Section of DIA told by Asst. Regional Director, Economic Dev., DIA, Quebec, that survey work in connection with Quebec Hydro r/w completed but plans not ready (presumably referring to work being done by Mercier).
- December 14 SLSA grants Licence No. 63-47 to H-Q for 315 kv line over expropriated Kahnawake lands *and* over lands in Municipality of Ste. Catherine.³ Annual rental is to be paid to SLSA by H-Q under licence. Lands in Ste. Catherine were later removed from licence and annual rental was decreased.⁴ [The area under the permit is now about 14.7 acres or 17.3 sq. arp.] Licence refers to an "authorizing" OC PC# 1966-195, dated Jan. 31, 1966. This OC approves leasing by SLSA of any lands or property held by the SLSA for any term not exceeding 10 years. Stipulates that: a) leases can be terminated upon 6 months notice in event that land required for public purpose, b) value of the land leased cannot exceed \$100,000, and c) lease will not provide for payment of compensation by SLSA to lessee for improvements, rents, etc.

1973

- May 28 SG issues supplementary instructions to C. L. Mercier for survey of SLS lots 18 to 25 inclusive. Mercier's survey plans for this survey work and for the work he did in the fall of 1972 show the lands on which the 120 kv lines (Line 2) are situated as being under a servitude to H-Q. His survey plan also shows a servitude lying north of seaway canal, between SLS Lots 22 and 23; this for the 315 kv line which is under Licence No. 63-47 from SLSA to H-Q. However, the plans do *not* show the 315 kv line and its supporting towers on SLS Lots 7, 8, 9 and 10 (all south of seaway canal) which are under 1972 permit from MCK to H-Q.

1976

- August 24 Internal DIA memo notes that before certain Caughnawaga lands can be returned to DIA from SLSA, a small parcel first has to either be transferred to H-Q or an easement granted.
- October 28 OC 1976-2662 transfers more than 553 acres taken for seaway purposes back to DIA. Lands transferred back are SLS lots numbers 4 through 26 inclusive. The OC states that SLSA reserves a servitude across SLS 4 for a power line. *This is not related to Line 1.* The servitude for the 315 kv line between SLS Lots 22 and 23 north of the seaway canal is excluded from the transfer to DIA, as are the servitudes for the two 120 kv lines which are also shown on Mercier's survey plans and are under a licence (#63-51) between SLSA and H-Q.

1977

- August MCK legal counsel inquires whether servitude mentioned in OC 1976-2662 was registered [over SLS 4]. DIA's reply indicates that they believe that November 1972 report from Quebec Region, which stated that survey work in connection with a Hydro Quebec r/w (Mercier's work) was completed, somehow relates to servitude mentioned in OC 1976-2662.

² Refer to footnote 1 for comments on the lands etched in red.

³ Once again, reader may wish to consult footnote 1.

⁴ As of January 1, 1995, \$66,090 had been paid to SLSA by H-Q under Licence No. 63-47. Note that this was for lands in Ste. Catherine as well as Kahnawake.

- September 30 DIA Ottawa writes to DIA Quebec inquiring whether plan referred to in November 17, 1972, memo completed so that servitude referred to in OC 1976-2662 can be registered.
- October 5 DIA tells MCK legal counsel that survey of servitude completed but they have not yet received copy of plan and servitude has therefore not been registered. Matter to be followed up.
- November 28 DIA internal memo states that when SLSA was to transfer back lands which were surplus to their needs, all hydro r/w would be included in the lands to be transferred. DIA would then negotiate with H-Q directly for servitudes. Memo notes that 1972 permit between MCK and H-Q was for servitude over lands which SLSA has not yet transferred back by 1966 and 1976 OCs. *[This is not actually correct, lands under permit between MCK/H-Q were in SLS Lots 7, 8, 9 and 10, all of which were transferred to DIA by 1976 OC.]* Further states that survey of hydro servitude needed, so land can be transferred from SLSA to DIA, then DIA can grant a servitude to H-Q. Once done, lands under servitude and SLS Lots 1 to 25 can all be returned to IR status.
- December 16 DIA writes to SG stating that they are negotiating with SLSA for transfer of lands to DIA which are encumbered by a servitude to H-Q and when transfer made, DIA will make a r/w agreement with H-Q.

1978

- January SG's office makes description of lands to be included in a servitude to H-Q. Said description states that lands total about 35 acres and are shown on particular CLSR plans as being adjacent to SLS lots 8 to 13 and SLS lots 22 to 25 inclusive. The CLSR plans mentioned are those done by Surveyor C. L. Mercier. *[The lands shown as being under a servitude to H-Q are for two 120 kv lines (under Licence No. 63-51), along with a small portion of land north of the seaway canal between SLS 22 and 23 for the 315 kv line, which is under Licence No. 63-47.]*
- February DIA writes SLSA inquiring if SLSA has granted a servitude to H-Q over the approximately 35 acres excluded from transfer to DIA in OCs of 1966 and 1976. DIA asks if SLSA prepared to transfer lands to DIA. SLSA replies that H-Q holds licence [referring to Licence No. 63-51 for the two 120 kv lines] from SLSA covering right to erect and maintain the transmission line and that H-Q has refused to sign any servitude agreement. SLSA makes no reference to Licence No. 63-47 for 315 kv line.
- October 12 Lands transferred to DIA by OCs in 1966 and 1976, namely SLS lots 1 through 26, are returned to IR status by OC 1978-3105.⁵ Servitudes located between lots 18-13 and 22 to 25 are *not* included in the lands returned to IR status.

1979

- November 28 DIA writes to Quebec Region (DIA). Substance of letter clearly indicates DIA's confusion about the transmission lines within the lands expropriated by SLSA. Specifically, DIA under impression that 35 acres referred to earlier covers the same property as a 1972 permit between MCK and H-Q. DIA's confusion apparently stems from fact that they lost plan submitted with said 1972 permit.

⁵ OC stated that SLSA was reserving a servitude across SLS 4 for a power line. Again, this is not related to Line 1.

BACKGROUND: THE EXPROPRIATION OF KAHNAWAKE LANDS BY THE ST. LAWRENCE SEAWAY AUTHORITY AND THE RETURN OF SURPLUS LANDS TO RESERVE STATUS

1. In September of 1955 and February and October of 1956, just over 1,350 acres of Caughnawaga I.R. No. 14¹ land was taken by the St. Lawrence Seaway authority in order to construct a seaway canal along the south shore of the St. Lawrence River. [Documents Nos. 2, 3, 4.]
2. Following construction, arrangements were made to return lands no longer required for seaway purposes to reserve status. W. J. Brennan, A/Chief, Agencies Division, Indian Affairs, wrote a memo to the Chief, Economic Development Division, in April of 1964 concerning the Seaway Authority's plans to turn over lands to Indian Affairs that were no longer required by the SLSA. Certain operating devices, including a sewage treatment plant, power lines and so on were located on the lands to be turned over. [Document No. 5.] A meeting was held in May of 1965 at which representatives of the SLSA, the Caughnawaga Council, and IAB were present. The main item on their agenda was the return of lands to Caughnawaga. With regard to land on the north side of the navigation canal:

...
The Authority stated it could not agree to return this land. There is a commitment to the Province of Quebec with respect to a future power development of the Lachine Rapids which will flood land on the north side of the canal. ...

[Document No. 6]

This commitment between SLSA and Quebec Hydro was discussed further in a memo dated June 24, 1965, from the Indian Affairs Branch's administrator of lands, W. P. McIntyre, to the Departmental Legal Advisor:

... there is a large area of land on the north side of the canal which the Authority says cannot be returned to the Band because of the Authority's commitment to the Province of Quebec. It is expected that Quebec Hydro will, in the not distant future, undertake a hydro-electric power development in the Lachine Rapids. This development will flood the land on the north side of the canal in whole or in part. The Authority has made a commitment to Quebec in respect of this land insofar as it will be affected by the proposed power development.

The Indians take the position that the Authority was empowered to expropriate for Seaway purposes only and therefore does not have the right to turn over land on the north side of the canal to the Province.

For the information of the Indians and ourselves, your opinion would be appreciated as to whether the Authority would be exceeding its powers by granting the former reserve land to the Province.

Negotiations are underway with the Authority with a view to reaching a final settlement between the Band and the Authority. An early opinion on the matter raised in this memorandum would be helpful in furthering the negotiations.

[Document No. 7]

The reply to the above memo is not known.²

¹ Note that the Kahnawake Band and Kahnawake I.R. No. 14 were known as Caughnawaga Band and Caughnawaga I.R. 14 until August of 1980.

² It is likely present on Department of Indian Affairs' file 373/34-1-1, Vol. 12, and was removed by whomever screened the file.

Although the proposed power development affecting lands on the north side of the seaway is not the subject at issue in this particular report, the Caughnawaga Band's position on the matter is of interest. The reason for this is that lands that had been expropriated by the seaway for seaway purposes were made the subject of a permit between SLSA and Hydro Quebec and were not returned to Kahnawake.

3. In September of 1966, an Order-in-Council authorized the transfer of 10,968,901 square feet (just under 252 acres) of expropriated land to the Minister of Citizenship and Immigration, Indian Affairs Branch. [Document No. 9.] Another 553.193 acres were transferred to Indian Affairs by an October 1976 Order-in-Council. [Document No. 27.] The lands transferred by the 1966 O.C. and 1976 O.C., consisting of about 805 acres, were set apart as part of Caughnawaga I.R. No. 14 by an Order-in-Council in October of 1978. [Document No. 42.]

THE LICENCE BETWEEN THE ST. LAWRENCE SEAWAY AUTHORITY AND HYDRO-QUÉBEC

4. Before the reconveyance of land discussed in the previous section took place, Hydro-Quebec constructed a double circuit 315 kv power transmission line, supported by several towers, which ran along the south side of the seaway canal, then crossed over to the north side of the canal and continued across the St. Lawrence River to the island of Montreal. (The location of the line and towers is illustrated in a sketch plan at the beginning of this report. The location is more accurately shown on Plans Nos. 1 and 7 which were included in the collection of plans submitted with this report.) Ten towers in all were constructed on the territory which had been expropriated by the seaway. Half the area of the base of each of seven of these towers lay on lands to be retained by the seaway, being within their minimum 100' allowance, and the remaining halves on SLS lots 7, 8 and 9. SLS lots 7, 8 and 9 were transferred to the control of the Minister of Citizenship and Immigration from the Minister of Transport by Order-in-Council in 1976 and then confirmed as part of Kahnawake by the 1978 O.C. mentioned above. Two towers were built on SLS 10, which also was returned to reserve status in 1978. Only one tower was built on the north side of the seaway canal and it lay in between, and entirely outside of, SLS lots 22 and 23.

The land upon which this last mentioned tower is situated was not returned to reserve status. Instead, the Seaway retained the lands a licence for them to the Québec Hydro-Electric Commission on December 14, 1972. The licence covered the lands occupied by the one tower situated between SLS 22 and 23, as well as the lands upon which were built the seven towers that overlap partly onto lands that are now officially part of Kahnawake I.R. No. 14 and partly onto the minimum 100' allowance of the SLSA.³ Pursuant to this Licence No. 63-47 Hydro has paid SLSA an annual rental since January 1, 1973. The licence also covered lands in Cote Ste. Catherine which the 315 kv line traversed and which is occupied by half the area of an additional 8 towers. [Document No. 24, as well as all subsequent

³ Hydro-Quebec obtained a permit from Kahnawake for the southern half of the lands occupied by the towers, as well as two other towers laying entirely on Kahnawake lands. This is discussed below.

amendments, Documents Nos. 29, 44, 45, 46, 47.] The annual rental paid from January 1, 1973 to January 1, 1995 is shown in Appendix A at the end of this report.

In 1990, Licence 63-47 was amended because lands upon which two of the towers were situated were sold to the city of Ste. Catherine by SLSA. [Document No. 46.] In 1993, the remaining property within the limits of the Municipality of Ste. Catherine was sold to city of Ste. Catherine by the Seaway Authority and the annual rental paid by Hydro-Quebec under Licence No. 63-47 decreased from \$3,610. to \$1,060. (a decrease of \$2,550 or about 70%). Since then it has increased to \$1,425. Thus, as of this 1993 amendment, Licence No. 63-47 only covered lands within the Domain of the Seigneurie of Sault St. Louis, on Caughnawaga I.R. lands which had been expropriated by the SLSA. [Document No. 47.] The lands covered by Licence No. 63-47 are shown on Plan No. 7 submitted with this report. The area of land now covered by the licence amounts to 17.3 arpents² (equal to about 14.7 acres). [Document No. 48, Annex I.]

It should be noted that the cover-sheet on Licence (63-47) stated that it was granted under "authorizing Order in Council" P.C. 1966-195. This O.C., passed January 31, 1966, approved the leasing by the St. Lawrence Seaway Authority of any lands or property held by the SLSA for any term not exceeding 10 years. The O.C. stipulated that: a) leases may be terminated upon six months notice in event that land required for a public purpose, b) the value of the land or property leased could not exceed \$100,000, and c) the lease did not provide for payment of compensation by SLSA to lessee for improvements, rents, etc. [See Document No. 8.]

THE PERMIT BETWEEN THE CAUGHNAWAGA BAND COUNCIL AND HYDRO-QUÉBEC

As stated above, the 315 kv line and its supporting towers crossed over lands which were expropriated by the SLSA but were to be conveyed back to reserve status. In anticipation of this eventual transfer, Hydro-Quebec also negotiated a lease with the Caughnawaga Band Council for the towers and transmission line which affected lands that were to be returned to Kahnawake I.R. No. 14. (Refer to the sketch map at the beginning of this report for the location of the towers in question.)

5. The Caughnawaga Mohawk Council passed a resolution (#46) on June 12, 1971, to allow Hydro-Quebec to erect and maintain a power line on their reserve:

Proposed by: Councillor Richard White
Seconded by: Councillor Melvin Diabo

RESOLVED that authority and approval be given to Hydro-Quebec for the erection of a proposed power line as outlined on a plan of Hydro-Quebec dated March, 1970, bearing the no. 0431-60102-005-01-0-TR-S⁴ involving the use of some 18 acres of land in the Caughnawaga Reserve and adjacent thereto in accordance with the terms and conditions outlined in the letter of the Band's Attorneys, Martineau, Walker, Allison, Beaulieu, Phelan and MacKell, to Hydro-Quebec dated June 8th, 1971, as modified by the terms and conditions of the letter of Hydro-Quebec's Attorneys to the Band's Attorneys dated June

⁴ See Plan No. 1.

11th, 1971, which modifications are hereby accepted, and copies of the said letters are attached to the present resolution [not attached].

BE IT FURTHER RESOLVED that the Council give its assent to an agreement containing the said terms and conditions whereby Hydro-Quebec will be permitted to erect and maintain the said power line and necessary accessories (only service road) and the majority of the Councillors of the Band be authorized to consent to such agreement on behalf of the Council and/or the Band.

BE IT FURTHER RESOLVED that the Council hereby request the Minister of Indian Affairs and Northern Development to consent to such Agreement in accordance with the said terms and conditions contained in letters mentioned above.

[Document No. 10]

6. Consequently, in May of 1972, an agreement was executed by the representatives of the Caughnawaga Band Council and the Quebec Hydro Electric-Commission. Although the Minister of Indian Affairs was identified as a party to the agreement, he never actually signed it:

BETWEEN: Her Majesty the Queen, herein acting and represented by the Minister of Indian Affairs and Northern Development, through his duly authorized representative,

hereinafter called the "Minister",

AND: The Caughnawaga Indian Band herein acting in and through its duly elected Council in virtue of a resolution of the Council of the Band at a meeting duly convened and held on June 12, 1971, herein represented by the six undersigned Councillors, being a majority of the band's councillors in office, and hereinafter called the "Band",

Party of the First Part,

AND: The Quebec Hydro Electric Commission, a corporation duly incorporated according to the laws of the Province of Quebec, having its corporate set in the City of Montreal, Quebec, herein acting and represented by Phil Theriault, in virtue of a resolution of the said Commission adopted at a meeting duly convened and held on May 8, 1972⁵,

hereinafter called "the Permittee",

Party of the Second Part.

WHEREAS the Permittee has applied to use and occupy a part of Caughnawaga Indian Reserve No 14, in the Province of Quebec, together with land in respect of which the Band has interests and rights for the purpose of erecting towers and power lines.

WHEREAS it is expedient that the Band be compensated for the proposed use of the said lands by the Permittee.

WHEREAS the consent of the Council of the said Band is required for the occupation and use or exercise of other rights of part of the said Reserve for a period longer than one year.

WHEREAS the Council of the Caughnawaga Band has recommended approval of this application.

Now, therefore, the Minister under authority of Section 28(2) of the Indian Act, Chapter I 6 of the Reserve Statutes of Canada, doth hereby grant the Permittee

⁵ This resolution of the Commission stated that three particular representatives, one of whom was Phil Theriault, were authorized to execute the agreement. [See Document No. 12.] Theriault signed the agreement.

the right to use and occupy the said lands in Caughnawaga, which lands are more fully described and etched in red and in green on the plan bearing the date March 1970, and the number 0431-60102-005-01-0-TR-S, attached hereto to form part hereof and signed for identification by the parties hereto.

It is fully agreed and understood that the said permit is granted on the following conditions to which the Permittee agrees:

1. That the Permittee shall have the right to use the said lands exclusively in order to install, maintain, operate, repair and replace a double circuit 315 KV power line, including a telecommunication system to be used exclusively for such power line system, and for such purpose may erect and maintain towers and wires on the said lands as shown on the said plan attached hereto to form part hereof and shall have access to and from the said lands, towers, wires, and power line provided that it shall use the land for no other purpose.

Nevertheless, the said power line and any replacement thereof shall remain in the same location and consist of towers of substantially the same size unless the Band consents in writing to a different location or size. Such right of access shall comprise the right to circulate at all times on the said lands by foot or by vehicles of any kind, for the purposes mentioned in the present paragraph. The Permittee shall also have the right to cut down, trim, remove and destroy, at any time all trees, shrubs, branches and bushes and remove any obstruction found on the said lands.

2. No constructions other than the said towers and lines shall be placed by the Permittee on the said lands and the Band shall not erect any buildings or structures on, or over, or under the said land except dividing fences and gates, nor shall the Band or the Permittee modify the present ground elevation.

3. The said power line shall follow the basic trajectory outlined on the said plan dated March 1970.

4. The present permit is granted for a period of fifty years, commencing January 1, 1971, and terminating December 31, 2020. However, the Permittee shall have an option to renew the said permit for a further fifty year period from January 1, 2021, on the terms and conditions herein provided.

5. That for the period from January 1, 1971, to December 31, 1996, the Permittee shall pay to the Band or to the Receiver General of Canada, for deposit to the credit of the Band for the benefit of the Band, an annual consideration or rental of EIGHT THOUSAND DOLLARS (\$8,000), payable in advance on or before January 1 of each year. The Permittee shall pay to or for the benefit of the Band, as aforesaid, an amount of SIXTEEN THOUSAND DOLLARS (\$16,000) upon the execution of the present contract in respect to the consideration of rental payable for the years 1971 and 1972, together with an amount of ONE THOUSAND DOLLARS (\$1,000) representing interest for the period from January 1, 1971, to date.

6. The said annual consideration or rental payable by the Permittee shall be revised for the period commencing January 1, 1996, and every twenty-five years thereafter, if the Permittee prevails itself of the option to renew the said permit. ... [sets out terms for negotiation of rental rate and provisions for arbitration if not agreed upon] ...

7. No substance, mineral or material shall be removed from the said lands by the Permittee and the Permittee shall not damage the said lands and shall replace them in the condition in which they were prior to the commencement of the present permit at its own expense within ninety (90) days of the installation of the said power line, and, for its own needs, shall be responsible for the maintenance of any access roads required exclusively for purposes of the power line and the Permittee shall bear all expenses connected with or incidental to such access roads.

...

... [remaining clauses of permit can be summarized as:

8-re procedure in event of default payment;

point 9 re interest rate on overdue payments;

10-actions which would result in forfeiture of permit;

11-permittee will not transfer or assign lands under permit by any act or deed;

12-permittee will conform with all federal and provincial laws and applicable Band by-laws;
13-any designee of Band Council or Minister can inspect lands;
14-permittee shall indemnify and hold harmless the Minister, the Queen, and the Band against all actions, claims, etc.;
15-permittee must pay all assessments, fees, taxes;
16-permittee will give Band members priority in connection with construction on said lands;
17-permit does not create a tenancy;
18-no members of Senate or House of Commons can be entitled to any share or permit or any benefit therefrom;
19-Permittee will pay for Band's legal fees incurred in negotiations for permit;
20-Band reserves right to remove petroleum, natural gas, minerals under land;
21-if power line not used for 3 consecutive years, Band can cancel permit] ...

AND IT IS FURTHER AGREED that this permit and any renewal thereof shall be subject to the provisions of the Indian Act and Regulations established thereunder which may now be in force and which may hereafter be made and established from time to time on that behalf by the Governor in Council.

IN WITNESS WHEREOF the Minister, acting by _____, has hereunto set his hand as well as the Band through its said Council, represented as above-mentioned and the Permittee, which has caused these presents to be executed and its corporate seal affixed hereto by its proper officers duly authorized on that behalf.

[unsigned]
Minister of Indian Affairs and Northern Development

*Chief Ronald Kirby Richard White Thos Lahache
Melvin Diabo Roger Goodleaf Michael E. Jacobs*
Caughnawaga Indian Band

Phil Theriault
The Permittee (Hydro-Quebec)

[Document No. 13]

7. On May 16, 1972, \$17,000 was sent to Indian Affairs' Montreal District by Hydro-Québec. This sum was credited to the Caughnawaga Band's capital funds and represented two year's rental as well as \$1,000 interest. [Document No. 14.]
8. On June 16, 1972, Mike Morris, Administrative Officer, Lands & Estates, Department of Indian Affairs, wrote to J. L. Menard of the Land Transaction Section of Indian Affairs from the Caughnawaga Agency Office. Morris forwarded two copies of the agreement between the Caughnawaga Band and Hydro-Québec and stated:

...
As this agreement (executed with the assistance of the Band's legal adviser) was consummated not without serious difficulty, we would recommend that the enclosed agreement be accepted as presented unless drastic alterations in form and/or content are absolutely mandatory.
...

[Document No. 15]

9. James O'Reilly of O'Reilly, Allain and Hudon, Counsel for the Caughnawaga Band, wrote to the Assistant Deputy Minister of Indian Affairs and Northern Development on June 27, 1972, to inquire whether the agreement of May 12th had been approved yet. [Document No. 16.]

10. At the same time, the Surveyor General, D. R. Slessor, was issuing instructions to the surveyor C. L. Mercier, for the survey of S.L.S. Lots 7 to 15 inclusive and "power line rights-of-way". The sketch plan, given to Mercier as Enclosure No. 25, shows the lots and power lines which he was to survey. Mercier was told to survey the nine parcels of land outlined in yellow on the plan as well as power line rights-of-way outlined in red (these rights-of-way are for two 120 kv lines⁶, not the 315 kv under consideration in this report). [Plan No. 2.] Mercier was informed that the lots he was to survey were "not now part of the Reserve". [Document No. 17.]
11. On July 12, 1972, H. T. Vergette, Chief, Lands Division, Indian Affairs, wrote a memorandum to the Departmental Secretariat stating that the Minister could not execute the draft permit between the Caughnawaga Band and Hydro-Quebec. [Document No. 18.]

Vergette's explanation of why the permit could not be executed by the Minister was incorporated into a letter for the signature of J. Ciaccia, Assistant Deputy Minister of Indian Affairs, addressed to James O'Reilly, of O'Reilly, Allain, Hudon (legal representatives for Caughnawaga). This letter is dated July 24, 1972.

I refer to your letter of June 27 [referred to above], concerning the Right-of-Way Agreement between Quebec Hydro, Her Majesty and the Caughnawaga Band. A copy of this Agreement was received here on June 26 but, for a number of major reasons, it cannot be executed by or on behalf of the Minister.

To begin with, the Agreement purports to grant rights over lands that are not yet Reserve lands. While we appreciate that the right-of-way lies on land that the St. Lawrence Seaway Authority intends to reconvey to Crown Canada, we can not issue a permit for those lands over which we have no control or administration. In addition, it appears that the proposed right-of-way crosses land which, we understand, will become Quebec Hydro land as a result of a conveyance by Seaway Authority.

The description in the permit refers to portions etched in "red and green". As we were not certain just what lands this involved, we discussed the description with our field staff, in Caughnawaga and were told that the portion etched in red will remain Seaway Authority land.⁷ We have no authority to grant rights over this portion.

Because of the terms and conditions of this permit, we feel that it would be advisable to have the right-of-way surveyed under the instructions of the Surveyor General of Canada Lands. However, the lands to be reconveyed by Seaway have not yet been surveyed, and this will probably have to be carried out before the right-of-way can be surveyed.

Finally, we require a certified true copy of the Resolution passed by Quebec Hydro on May 8, 1972.

It is unfortunate that our field staff in Quebec were not involved in the negotiations as many of these problems could have been discovered before the draft permit was prepared.

We are now asking our Quebec Regional officers to contact you to discuss these deficiencies and I assure you that they will assist in any way they can to correct them.

[Document No. 19]

⁶ This line is known as Line 2 and is the subject of another report. Readers may wish to consult this other report for clarification when reading this report (Line 1).

⁷ The lands etched in red are those under licence 63-47 discussed earlier in this report.

On October 30, 1972, the Assistant Deputy Minister, John Ciaccia, wrote a response to an October 2nd letter from James O'Reilly [O'Reilly's letter not found]. Ciaccia informed O'Reilly that he was giving his approval "in principle" to the transaction anticipated by the May agreement between the Caughnawaga Band and Hydro-Quebec:

I refer to your letter of October 2, requesting confirmation of conditional approval to the agreement between Hydro Quebec and the Caughnawaga Indian Band, which you sent with your letter of June 27.

On behalf of the Minister, I approve, in principle, the transaction anticipated by this agreement. It is understood that formal completion will not take place until the plan of survey and suitable description of the lands affected have been registered.

I would appreciate it if you would continue to work with our Regional Office on this matter to ensure that it is completed with a minimum of delay.

[Document No. 20]

O'Reilly forwarded a copy of Ciaccia's letter to Hydro-Quebec. [Document No. 21.]

13. On November 8, 1972, W. V. Lowry, Head, Land Transactions Section, Indian Affairs, Ottawa, wrote to the Regional Director of Indian Affairs' Quebec Regional Office re "Quebec Hydro Right-of-Way Caughnawaga I.R. No. 14" asking for "an up-to-date report on the above matter." [Document No. 22.] In reply, on November 17, 1972, it was reported that the survey work in connection with the "Quebec Hydro Right-of-Way" was complete but that the plan was not yet ready. [Document No. 23.]
14. On May 28, 1973, the Surveyor General, D. R. Slessor, issued supplementary instructions to C. L. Mercier for the survey of SLS lots 18 to 25. [Document No. 25.]
15. An internal Indian Affairs written by G. A. Poupore, Director, Lands and Membership, Indian Affairs, to a Mr. Boudreault on August 24, 1976, states:

This deals with the return of the Caughnawaga lands to us from the Seaway. It should not be on a red docket yet. Incidentally, one caution - before the lands are set apart as an addition to the reserve there is a small parcel which has to be transferred to Quebec Hydro or at least an easement granted.

[Document No. 26]

Unfortunately, what Poupore was transmitting to Boudreault with this note is not known.

16. On October 28, 1976, Order-in-Council P.C. 1976-2662 authorized the transfer of 553.193 acres of land to the Minister of Indian Affairs and Northern Development from the Minister of Transport. Involved in the transfer, as per an attached schedule, were SLS lots 4 to 26 inclusive.

The Order-in-Council stipulated that the St. Lawrence Seaway Authority was reserving "the right and privilege to erect, maintain and use a power line on, over and across the lot designated as SLS 4, according to CLSR plan no. 55149." Examination of this plan shows a power line crossing SLS 4 (25' wide right-of-way) and belonging to Hydro-Quebec (see the sketch plan at the beginning of this report). It is not related to the transmission line under consideration in this report. [Document No. 27.]

James O'Reilly, legal counsel for the Caughnawaga Band, inquired to G. A. Poupore, Director of the Lands and Membership Branch of Indian Affairs, on August 23, 1977, as to whether the servitude to Hydro-Quebec referred to in O.C.P.C. 1976-2662 had been registered so that the 804 acres conveyed to the Minister of Indian Affairs by that O.C. as well as the 1966 O.C. could be confirmed as Caughnawaga reserve lands. [Document No. 28.]

18. On September 30, 1977, G. A. Poupore, Director, Lands and Membership, wrote to the Assistant Director of Lands, Indian and Eskimo Affairs, Quebec Region, stating that a memo dated 17 November 1972 had advised that the survey of the right-of-way for Quebec Hydro was soon to be completed. If done, Poupore asked that the plan be forwarded so that the servitude could be registered. [Document No. 30.]

On October 5, 1977, G. A. Poupore informed James O'Reilly that the survey of the servitude was completed but they had not yet received a copy of the plan. Thus, the servitude had not been registered. Poupore advised that his officers were following the matter up.⁸

[Document No. 31.] However, on October 18, 1977, Jean-Guy Charest, Regional Lands Advisor, notified Poupore that: "after investigation, we found no other survey request than the attached Survey Instructions A-72, dated June 7, 1972, and no other survey plan of the above mentioned right-of-way than the numbers M 2364, 58619, 58643 and 58645 C.L.S.R." [Document No. 32.]

A memo written to H. J. Ryan, Lands and Membership, Indian Affairs, perhaps by G. A. Poupore, on November 28, 1977, indicates Indian Affairs' continuing confusion about what lands were included in the May 1972 permit between the Caughnawaga Band Council and Hydro-Québec:

It is my understanding that when the St. Lawrence Seaway Authority was returning lands which were surplus to their needs to Crown Canada, the Department would receive the Seaway Lots plus Quebec hydro rights of way and we would negotiate directly with Hydro Quebec regarding their servitude.

There are two Orders in Council transferring lands back to Crown Canada for the use and benefit of the Caughnawaga Band. The descriptions in the schedules attached and relevant plans do not include nor are they subject to the servitude to Hydro Quebec.

In order for our Department to negotiate with Quebec Hydro we should have control and administration of the land affected by their servitude.⁹

The Caughnawaga Band, in 1971 negotiated with Quebec Hydro the terms and conditions for the servitude. An agreement (item 1 attached) signed by Quebec Hydro and the Band Council Representatives was submitted for execution by our Minister, and a sum of \$17,000 being the fee for two years plus \$1,000 interest was deposited to the Band Capital Fund.

⁸ It would appear that there was some confusion about this. The right-of-way referred to in the November 17, 1972 memo was not connected in any way to the servitude for a transmission line reserved to the Seaway on SLS 4 by O.C.P.C. 1976-2662. The confusion may have started with Poupore, who may have assumed that the servitude referred to in O.C.P.C. 1976-2662 was the same transaction as the right-of-way (for Line 2) mentioned in the November 17, 1972 memo.

⁹ The statements made in the first three paragraphs of this memo clearly indicate that the author had no knowledge of the fact that the servitudes to Hydro-Québec shown on the plans referred to in the schedule to the Orders-in-Council were already under licence to Hydro-Québec from the St. Lawrence Seaway Authority. The servitude between SLS lots 22 and 23 shown on CLSR Plan 58758 was under Licence 63-47, being the lands occupied by the 315 kv line and a tower. Said permit is discussed earlier in this report.

Because the land over which the servitude exists was not yet part of Caughnawaga Reserve and because a legal survey was required, this agreement was not signed by our Minister. By letter dated October 30, 1972, however approval in principle was given to the transaction anticipated by this Agreement (copy item 2 attached). What we need now is:

- (a) a survey of the Hydro Servitude;
- (b) O.C. transferring the surveyed R/W from SLSA/Transport Canada to D.I.A.N.D. Crown Canada;
- (c) Enter into Agreement with Hydro pursuant to the Public Lands Grant Act, and register the servitude;
- (d) Set all the lands i.e. SLS Lots 1 to 25 and land covered by the Servitude in favour of Hydro as an addition to Caughnawaga I.R. 14.

It has been suggested by Surveys that a compiled plan could be drawn showing the Hydro Servitude based upon the available plans of the St. Lawrence Seaway lots, and may be used for legal description purposes. This alternative to (a) would be quicker and cheaper. Quebec Hydro's approval of this plan will be sought.

[Document No. 33]

19. On December 16, 1977, G. A. Poupore, Director, Lands Branch, wrote to D. R. Slessor, Surveyor General, Legal Surveys Division, Surveys and Mapping, stating that a servitude in favour of Hydro-Quebec was shown on CLSR plans 58619, 58643, 58645 and 58758 [see Plans Nos. 3, 4, 5 and 6] and that the survey instructions for those plans were made on July 6, 1972 and May 28, 1973. Poupore stated:

...
Our Department is negotiating with the Saint Lawrence Seaway Authority the transfer of management and control of the lands encumbered by the Hydro-Quebec servitude and when this transfer is accomplished will enter into a right-of-way agreement with Hydro-Quebec.

For these two purposes we require a description of the Hydro rights-of-way utilizing the existing plans of survey of the St. Lawrence Seaway lots for (a) an Order in Council and (b) a Right-of-Way Agreement.

[Document No. 35]

20. In accordance with the instructions from Poupore, a description of the servitude in favour of Hydro-Quebec was prepared on January 9, 1978:

In the Province of Quebec
in the County of Laprairie
in Caughnawaga Indian Reserve No. 14;
that part of a servitude in favor of Hydro-Quebec
adjacent to Lots S.L.S. 8 to 13 inclusive and Lots S.L.S. 22 to 25 inclusive as
shown on plans recorded under numbers 58619, 58643, 58645 and 58758¹⁰ in
the Canada Lands Surveys Records,
said servitude having an area of 35 acres more or less.

[Document No. 36]

The description was sent to Poupore the same day.

¹⁰ Once again, note that the servitude between SLS 22 and 23 shown on CLSR Plan 58758 [Plan No. 6] is for a portion of the 315 kv line and has been under Licence 63-47 between SLSA and Hydro-Québec since 1972, as discussed earlier in this report.

The other lands shown as being under servitude to Hydro-Québec on CLSR Plans 58619, 58643, 58645 and 58758 are for two 120 kv lines (Line 2) which were also under licence from SLSA to Hydro-Québec (Licence #63-51).

21. On January 26, 1978, G. O'Reilly, possibly of the Lands Branch, Indian Affairs, wrote a memo stating that the transfer had not yet taken place. The course of action decided on was to ask SLSA to transfer the administration and control of the lands in which the servitude was included so that the easement could be made to Hydro-Quebec.

I spoke with Mr. Menard [Land Transaction Section of Indian Affairs] regarding the course of action we should take in order to have control of the lands over which the Quebec Hydro right-of-way is located transferred to us.

He advised me to approach the St. Lawrence Seaway Authority with the proposal. If they agree with the proposal and transfer administration and control, we will then decide whether to proceed with PLG Act [Public Lands Grants Act] or Indian Act for the easement to Hydro.

No other money except the \$17,000 credited to the Band Capital have been received by our Finance Branch from Hydro.

I am unable to get Foy Poulin re whether the Band has been receiving money directly. Will call Monday 30th for confirmation.

A note written on the memo later stated:

called Band office 6/2/78 they advise that they are receiving \$8000 per annum from Quebec-Hydro - cheque made out to Rec. General on behalf of the Iroquois of Caughnawaga

[Document No. 37]

22. On February 17, 1978, G. A. Poupore, Director of the Lands Branch, Indian Affairs, wrote to Jacques St. Laurent, Real Property Administrator, The St. Lawrence Seaway Authority, at St. Lambert, Quebec. Poupore stated:

Orders in Council P.C. 1966-1824 dated September 22, 1966 and 1976-2662 dated October 28, 1976 transferred to our Department the management and control of twenty-six parcels of land containing by admeasurement 251.809 acres and 553.193 acres respectively.

We will shortly make a submission to the Governor in Council establishing these lands as an addition to the Caughnawaga Indian Reserve No. 14.

According to our records some 35 acres of land were excluded because of a proposed servitude in favour of Hydro-Québec.

I would appreciate knowing whether you have granted this servitude to Hydro-Québec and whether you are now in a position to return these lands to us.

...

[Document No. 38]

23. Within ten days, Jacques St. Laurent sent this reply to Poupore:

Further to your letter of February 17, 1978, we wish to inform you that the servitude referred to has not yet been granted by the Authority.

Presently, Hydro-Québec holds a Licence from the Authority covering the right and privilege to erect, maintain and use the transmission line on Authority land.

It may still be some time before the matter is finalized. Hydro-Québec has so far refused to sign an agreement with the Authority confirming the conditions under which the transmission line was relocated to accommodate the construction of the Seaway. The agreement provided for a servitude to Hydro-

Québec. However, it appears that Hydro-Québec is satisfied with the Licence it holds from the Authority.¹¹

We shall revive the matter with Hydro-Québec in an attempt to conclude the agreement and keep you informed of further developments.

[Document No. 39]

24. On October 12, 1978, Order-in-Council P.C. 1978-3105 set apart 805.002 acres, which had been transferred to the Minister of Indian Affairs by O.C.P.C. 1966-1824 and O.C.P.C. 1976-2662, for the use and benefit of the Caughnawaga Band as an addition to I.R. No. 14. The lands transferred were SLS Lots 1 through 26 inclusive. It was noted that the St. Lawrence Seaway Authority reserved "the right to erect, maintain and use a power line on, over and across the said S.L.S. 4".¹² [Document No. 42.]
25. On November 28, 1979, F. J. Singleton, Acting Director, Lands Branch, Indian Affairs, forwarded copies relating to the servitude for Hydro-Quebec to the Regional Director General of Indian Affairs at Ste. Foy, Quebec, stating that it was necessary to locate a 1972 sketch showing the lands affected. Once found, a surveyor could then confirm which lands were involved and an official survey plan could be prepared. It would then be decided whether the Minister should sign the agreement drafted in 1972 or prepare a new agreement. Singleton too is clearly confused about what lands were included in the May 1972 permit.

[Rough draft translation from French:]

Servitude - Hydro Québec
Caughnawaga Reserve and the St. Lawrence Seaway

This is further to the telephone conversation of J. L. Ménard/Michel Sioui regarding the above-mentioned subject.

It is a fact that on June 27, 1972, the firm of O'Reilly, Allain, Hudon sent us an agreement document covering a right-of-way in favour of Hydro-Quebec. It appears that the said [*tracé*-tracing?] affected reserve lands as well as lands still belonging to the St. Lawrence Seaway.

On July 12, 1972, we furnished to the Secretariat of the Ministry the details connected with the affair and explained why the Minister could not countersign the document. The result was a letter of July 29, 1972, [sic - July 24, 1972] from our Assistant Deputy Minister to Mr. James O'Reilly. We are annexing a copy of these two letters as well as others that followed.

It also appears from a letter of November 17, 1972, from the Regional Office that the right-of-way had been surveyed, however, we have received a contradictory report dated October 18, 1977.

Thus, on August 23, 1977, Mr. O'Reilly wrote again on the subject of the right-of-way and our letter of September 30, 1977, followed with the result that the contradictory report above-mentioned of October 18, 1977 was made. Due to these difficulties, we have written to the St. Lawrence Seaway on February 17, 1978, to receive from them the answer of the following February 27. Copies hereto-attached. It is to be noted that nothing transpired following this letter from Mr. Jacques St-Laurent.

In conclusion, a survey plan proves necessary and this, as much for the portion on this side [*en deçà*] of the limits of the Reserve as for the portions of lands "retained" or not "re-transferred" by the St. Lawrence Seaway (35 acres

¹¹ St. Laurent is referring to Licence 63-51 between SLSA and Hydro for Line 2. It is not known why he makes no mention of Licence 63-47 covering the 315 kv line.

¹² SLS 4 is a considerable distance from the line under consideration in this report, as can be seen on the sketch map showing SLS lots at the beginning of this report.

approx.). At the time of the reception in 1972 of the agreement project there was a sketch which was given to the appropriate section for conservation purposes. For unknown reasons, we cannot find the said sketch.

There would be reason for you to inquire if Hydro Quebec is expecting two servitudes or only one to cover the whole right of way.

In the last case, the 35 acres would have to be returned to us and I do not believe that the Seaway envisaged such a cession.

Regarding the sketch made in 1972, today lost, there is reason to believe that there exists another copy in the files of Hydro Quebec. In the affirmative, it should be possible for your Regional Surveyor to confirm a) that the tracing does affect reserve lands and also out of reserve lands (i.e. lands retained by the Seaway) and b) that such a tracing could be the object of an official survey plan for a sole and unique servitude (once the lands are retroceded by the Seaway). This having been done, it is a matter of deciding if the draft agreement of 1972 could be submitted for signature in the name of the Minister thus avoiding the necessity of having to prepare a new agreement.

We would appreciate being kept informed of the success of your proceedings.

[Document No. 43]

APPENDIX A
ANNUAL RENTAL PAID TO ST. LAWRENCE SEAWAY AUTHORITY BY
HYDRO-QUEBEC UNDER LICENCE NO. 63-47, 1973-1995

(area covered by licence 17.3 arp.² or about 14.7 acres)

January 1, 1973		\$2,090.00
January 1, 1974		\$2,090.00
January 1, 1975		\$2,090.00
January 1, 1976		\$2,090.00
January 1, 1977		\$2,090.00
January 1, 1978	Amendment Sept. 29, 1977	\$2,400.00
January 1, 1979		\$2,400.00
January 1, 1980		\$2,400.00
January 1, 1981	Amendment Dec. 31, 1980	\$3,290.00
January 1, 1982		\$3,290.00
January 1, 1983		\$3,290.00
January 1, 1984	Amendment Jan. 23, 1984	\$3,425.00
January 1, 1985		\$3,425.00
January 1, 1986		\$3,425.00
January 1, 1987		\$3,425.00
January 1, 1988		\$3,425.00
January 1, 1989		\$3,425.00
January 1, 1990	Amendment Jan. 5, 1990	\$3,975.00
January 1, 1991		\$3,975.00
January 1, 1992		\$3,975.00
January 1, 1993	July 21, 1993 Sale (8 pylons removed from licence)	\$3,610.00
January 1, 1994		\$1,060.00
January 1, 1995		\$1,425.00

TOTAL:\$66,090.00

REPORT:

**The Expropriation of Kahnawake Territory by the Cedars Rapids
Manufacturing & Power Co. and their Successors, the Quebec Hydro-
Electric Commission, for Power Transmission Lines (Line 2)**

**Prepared by Joan Holmes & Associates, Inc.
for the Mohawk Council of Kahnawake
June 1997**

REPORT:

**THE EXPROPRIATION OF KAHNAWAKE TERRITORY BY THE CEDARS RAPIDS
MANUFACTURING & POWER CO. AND THEIR SUCCESSORS, THE QUEBEC HYDRO-
ELECTRIC COMMISSION, FOR TRANSMISSION LINES (LINE 2)**

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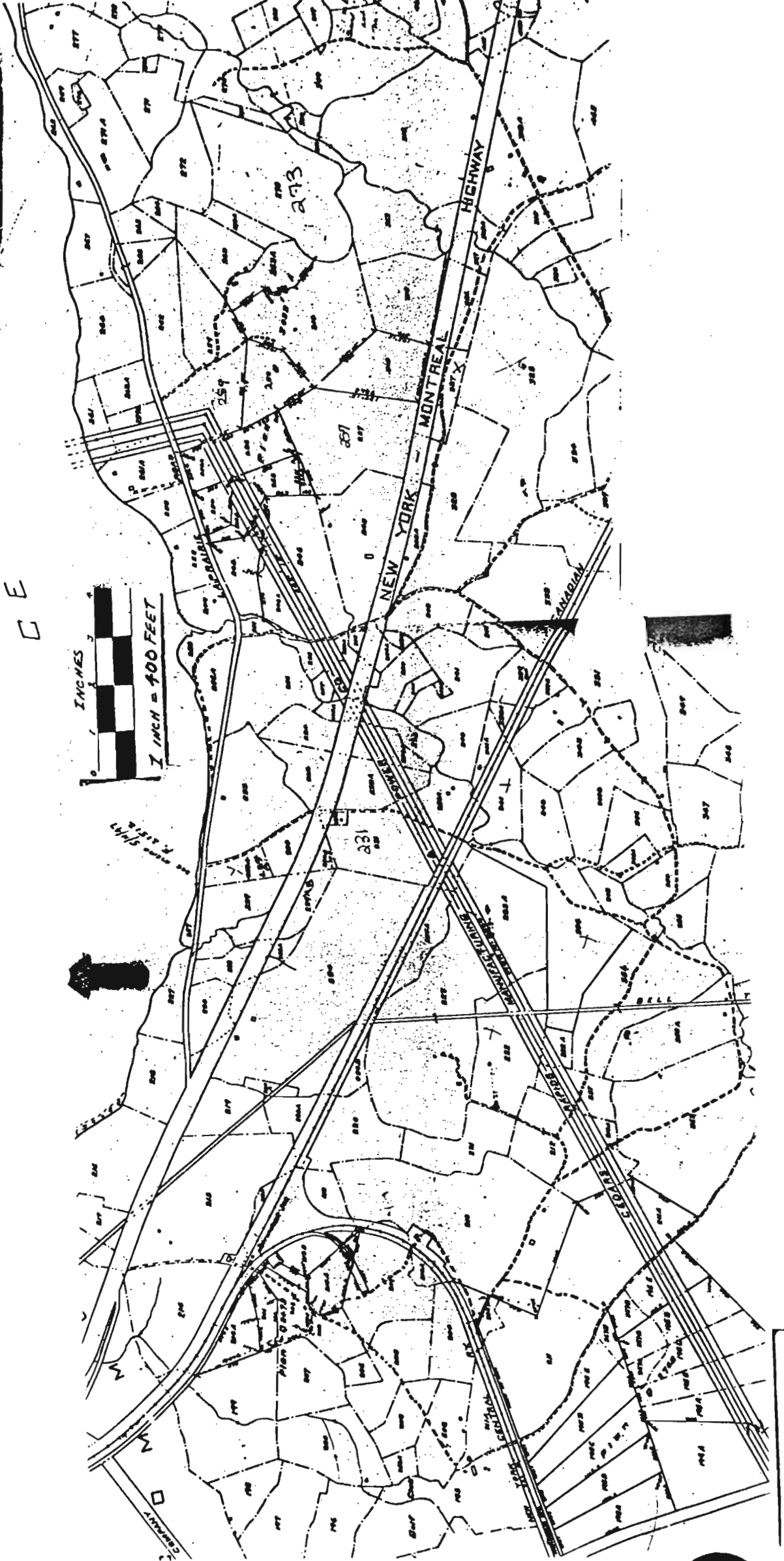
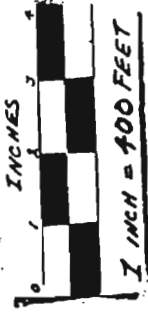
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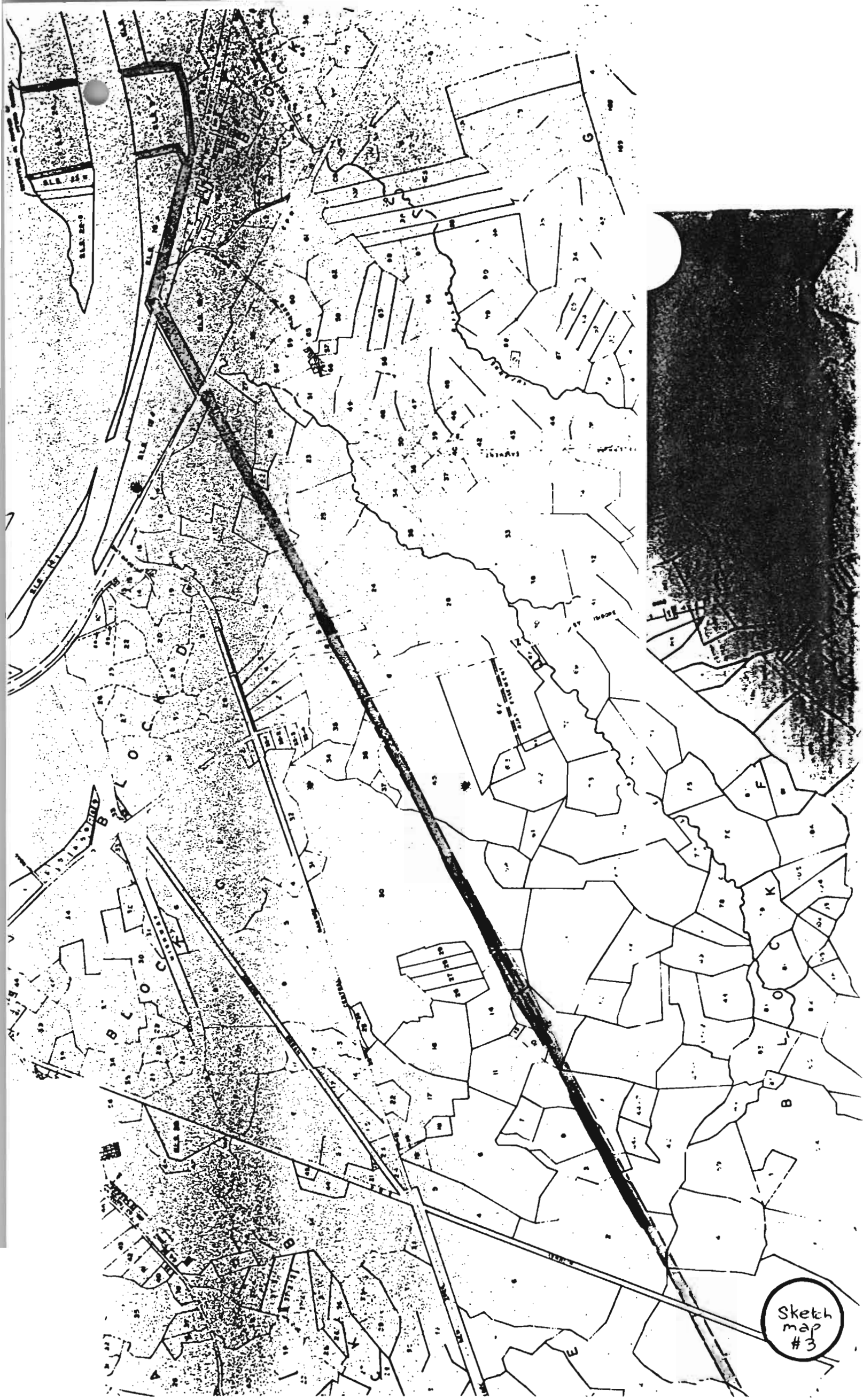
T2611

RIVER

CE

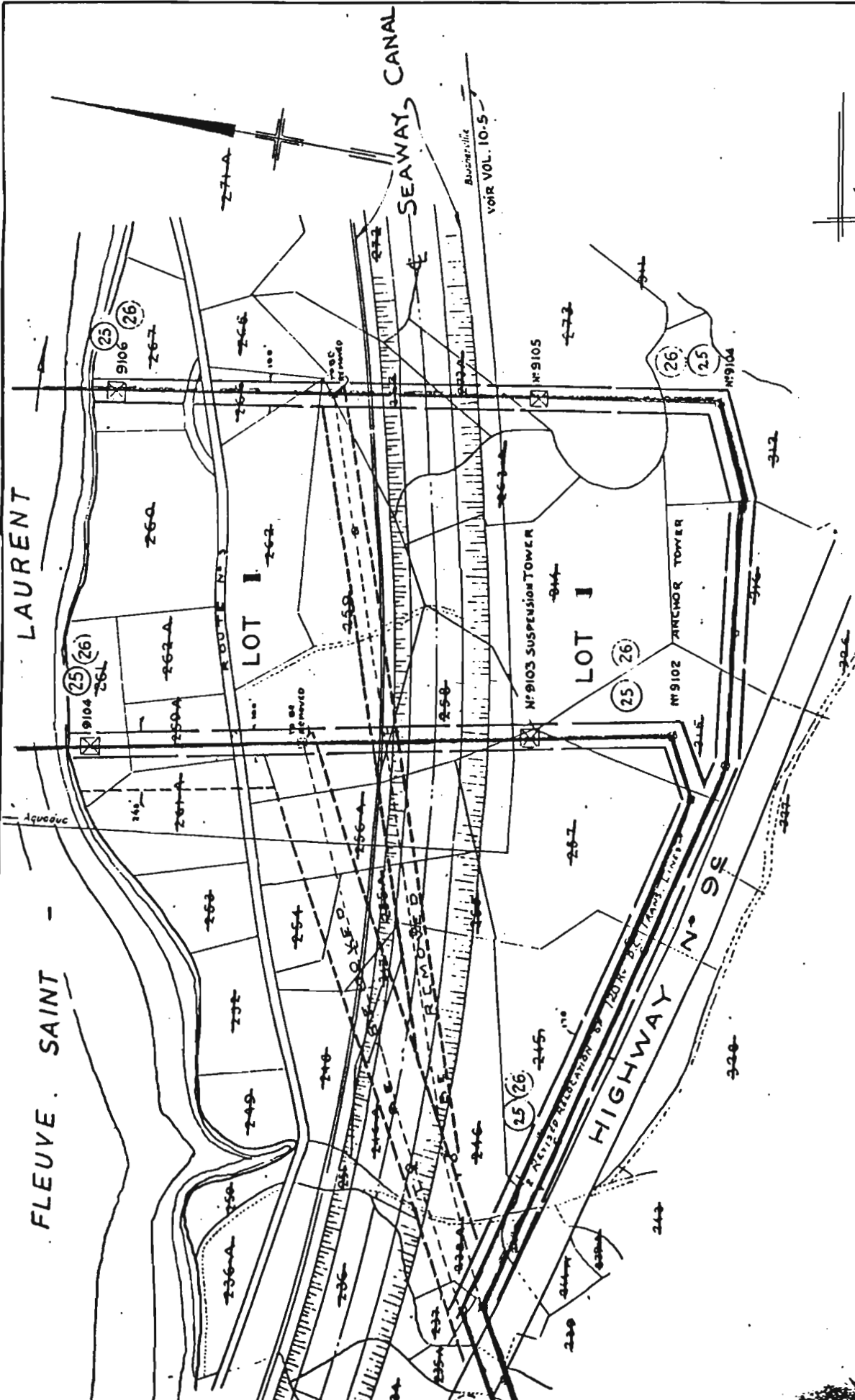


sketch map #1



Sketch
map
#3

Extract from Plan H-3 (Supplied by Hydro-Québec) no date



INSERT

Sketch map #4



INCHES



1 INCH = 1,000 FEET

Red-20

SLS 4

2 OF



SLS 6
SLS 176

SLS 188
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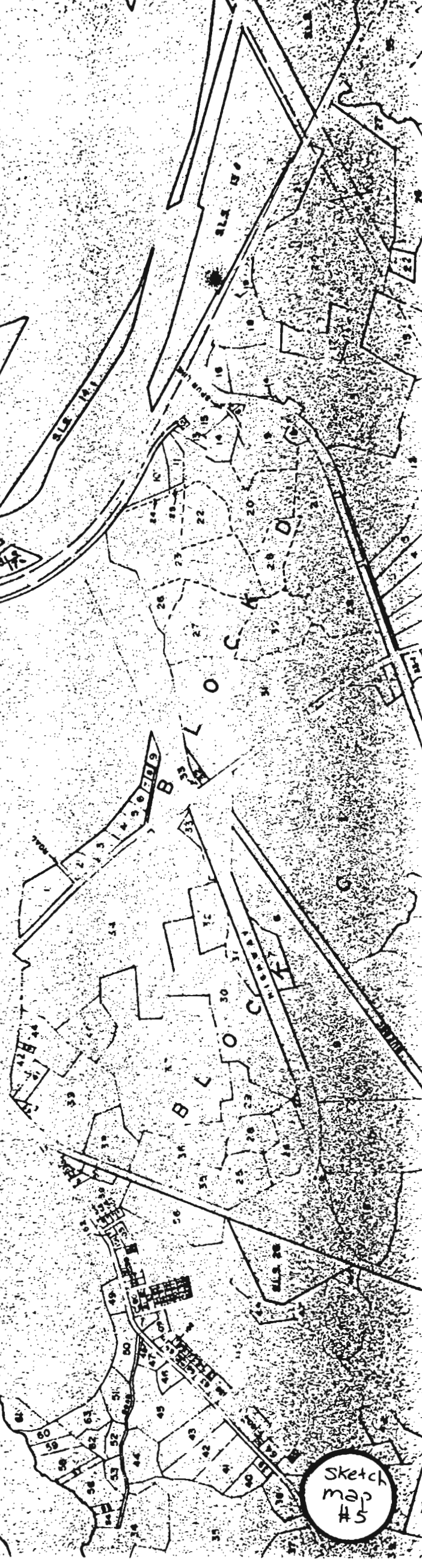
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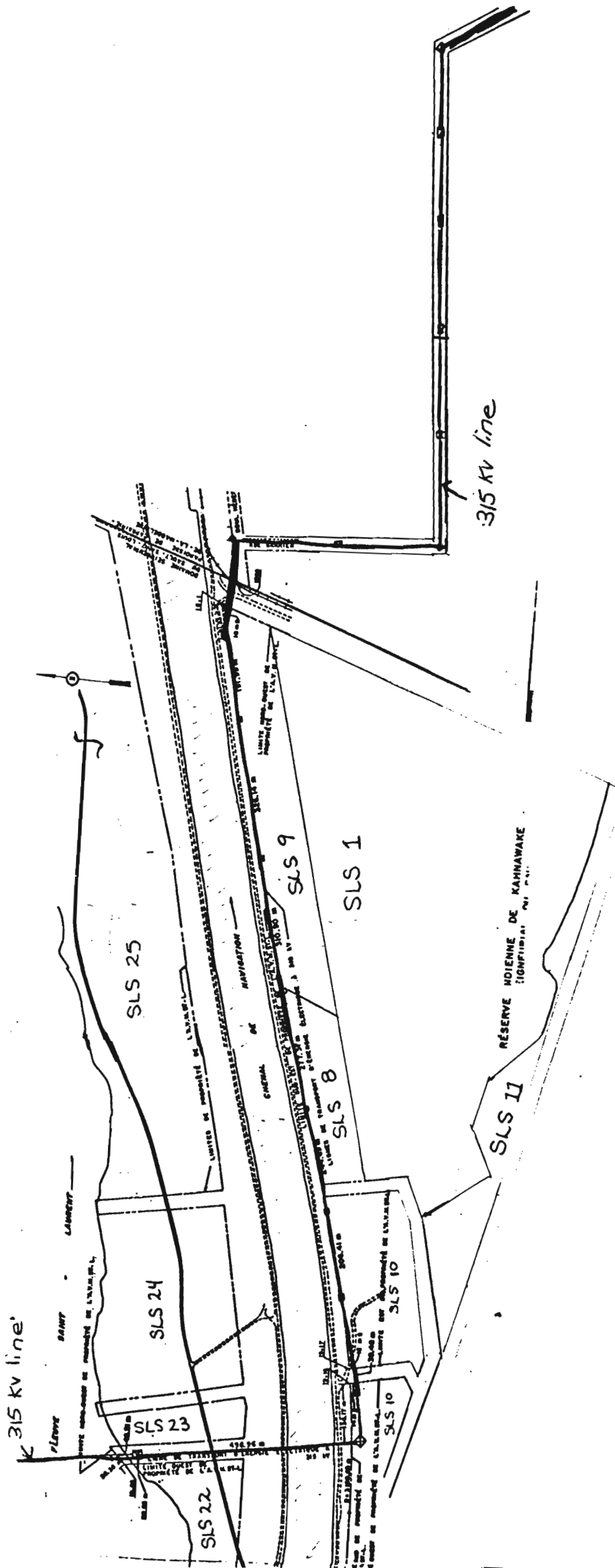
HONORE MERCIER BRIDGE

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VILLAGE OF CAUGHNAWAGA



Sketch map #5



SKETCH PLAN - not to scale

Sketch map #6

CHRONOLOGY OF EVENTS

ABBREVIATIONS:

BCR	Caughnawaga Band Council Resolution
CLH&P	Canadian Light, Heat and Power Co.
CRM&P	Cedars Rapids Manufacturing & Power Co.
DIA	Department of Indian Affairs
H-Q	The Québec Hydro-Electric Commission
IR	Caughnawaga Indian Reserve No. 14
MCK	Mohawk Council of Kahnawake (formerly Caughnawaga Band Council)
OC	Order-in-Council
PC	Privy Council
QLS	Quebec Land Surveyor
r/w	right-of-way
RSQ	Revised Statutes of Quebec
SG	Surveyor General
SGIA	Superintendent General of Indian Affairs
SLSA	The St. Lawrence Seaway Authority
SQ	Statutes of Quebec

1929

- July 23 CRM&P solicitor informs DIA that their clients want to erect a power transmission line which will traverse Caughnawaga IR. Company requires servitude only and "[t]he land itself would be in no way affected, except at points where the towers were erected". Notes that compensation paid for lands outside the reserve has been \$25. for each lot affected and \$40. for each tower.
- July 24 DIA advises CRM&P to send formal application, along with plan, signed by a QLS, on tracing linen and 2 blueprints. Caughnawaga Indian Agent is to be supplied with copy of plan and arrangements made for representative of CRM&P to interview each Indian individual property owner, accompanied by Indian Agent, so as to arrive at satisfactory compensation. Written acceptance from each Indian should be obtained and witnessed by Indian Agent. Proportion, usually 5%, of compensation paid to individuals should be deducted for Band interest. CRM&P may enter IR for purposes of survey but not construction.

1930

- January 7 CRM&P submits formal application to DIA for a "perpetual easement or servitude and right to erect two transmission lines and telephone lines" across IR. Servitude required over approximately 119 acres or 141 sq. arp. (square arpents) on which 28 towers will be erected. Area will not be fenced. Notes that average price of \$30 per sq. arp. paid for non-IR lands. Cheque for \$4,230 forwarded representing \$30 per sq. arp. for all IR lands to be affected. Plan also forwarded.
- January 18 Quebec Public Service Commission orders that CRM&P be allowed to construct telephone and transmission lines between Cedars Rapids and Verdun as said construction necessary for public benefit.
- January 23 DIA tells Indian Agent that settlement should be arranged between CRM&P and Indian owners at "price considerably lower than the full value of land per acre."¹ Agent to advise DIA on rate per sq. arp. that should be used to compute a deposit to be made by CRM&P. DIA writes legal counsel of CRM&P to say that compensation of \$4,230 forwarded is inadequate and to enter IR to commence construction, they must deposit additional \$25,000. DIA sets out their requirements for the plan to be filed by CRM&P and instructs them to supply it as soon as possible.
- February 20 Ten of locatees and one estate give Frank McDonald Jacobs power of attorney to act on their behalf in relation to transmission line negotiations. He is to receive 10% of compensation settlements in return.
- February 27 Caughnawaga Chief Peter Williams inquires whether CRM&P has power to expropriate IR lands. DIA replies to Williams that CRM&P can be permitted to expropriate lands for r/w under Sec. 48 of Indian Act provided they sufficiently

¹ Three years later, DIA's 1933 instructions to Indian Agents explicitly stated that the value of a "long or permanent easement" should be "almost the full value of the land".

prove that the r/w is necessary. Notes that CRM&P did not request sale of required lands; only an easement will be granted, if proven necessary.

- March 6 Legal firm Casgrain and McDougall writes DIA to say that a number of Caughnawaga property owners have consulted them re CRM&P's proposed transmission line. These locatees believe that compensation offered is inadequate, particularly since CLH&P paid about \$187 per acre in connection with their power line. DIA replies that CLH&P purchased r/w whereas CRM&P will only get an easement.
- March 12 CRM&P (via solicitors) submits another application for "easement or servitude" across IR, asserting that \$4,230 is adequate compensation and that amounts demanded by locatees are unreasonable. Deposit of \$25,000 enclosed (but they state that they do not admit that lands are worth more than \$4,230) and request made for permission to enter IR to begin construction. A revised plan enclosed with application as well as a list of rates which CRM&P reportedly paid for non-IR lands (range anywhere from \$32 per acre to \$98.60 per acre).
- March 15 DIA instructs their surveyor W. R. White to value proposed r/w, arriving at fair compensation to be paid to individual Indian owners and for any common lands to be affected. White should endeavour to obtain acceptance of individual owners and band to compensation [note: no common lands affected].
- March 19-28 CRM&P concludes agreements in quadruplicate with individual owners for compensation estimates suggested by W. R. White. Indians all to be paid \$100 per acre for any lands affected by servitude, \$25 per acre for underbrush, \$25 for every tower, \$45 for each anchor tower, \$65 each for suspension towers, \$5 each for telephone poles, any valuable timber to be paid for according to estimate prepared by White. Twenty-seven individuals sign agreements; 5 proprietors do not sign. In one case, problem related to ownership dispute. All agreements are on a standard form which states that locatee accepts particular sum as payment for "the right to that Company, its representatives or assigns, in perpetuity, to construct, maintain and operate, on and over" their property towers, poles, etc. for transmission of power. Continuing right to cut brush without further compensation. Most of agreements have a statement attached defining how valuation arrived at, i.e. number of acres, towers, poles, etc.
- March 27 DIA advises CRM&P that they approve of settlements made. Total value of settlements is \$19,034.25, plus 5% for Band interest, is \$19,985.96. As CRM&P already deposited \$29,230, balance returned by DIA. Once plan on tracing linen and 2 blueprints forwarded, OC will be applied for. May enter IR for construction purposes.
- April 5 Final plan of r/w sent to DIA.
- April 30 Locatee William Leclair signs agreement (3 left unsigned, for properties of Louis Snow, Sak Atrenho and Lawrence Canadian).
- May 6 Chief Surveyor DIA tells DIA Secretary that OC required in order to "grant a right of occupation" to CRM&P.
- May 16 SGIA submits report to PC asking that OC be passed giving CRM&P right to construct, operate and maintain power line.
- May 21 to 28 DIA corresponds with Sak Atrenho (C.W. Cloud), stating that DIA has accepted compensation of \$717 on his behalf and he would receive said sum once he applied for it. Sak Atrenho replies that he wants at least \$1,150 because future development potential of his property "damaged completely". DIA also corresponds with locatee Louis Snow's legal counsel. Snow believes offer of \$1,030 inadequate because area of land involved was miscalculated and timber was undervalued.
- May 29 OC (PC #1141) passes. States that CRM&P has paid for privilege of having a right of occupation in full in accordance with valuation of DIA. CRM&P to "have the right to construct, operate and maintain the power line or lines on the right of way but is not to fence the line nor to prevent the use of the land for agricultural purposes." Granted pursuant to Sec. 48 of Indian Act.
- May 30 DIA tells Louis Snow that DIA can permit expropriation and that his agreement to the valuation not necessary.

- June 5 DIA tells Sak Atrenho that valuation of \$717 "very liberal" and he should apply for sum so it can be sent. Louis Snow warned by DIA not to interfere with construction.
- June 7 Mrs. Lawrence Canadian (Deerfoot estate) signs agreement.
- June 14 Sak Atrenho signs agreement.
- June 28 Louis Snow signs two agreements.

1935

- June Michel La Hache signs additional agreement in connection with small parcel within r/w about which there had been a question about ownership.

1948

- November 25 H-Q (successors to CRM&P) informs DIA that they want to run another transmission line across St. Lawrence River which will be located about 1700 ft. east of existing crossing built in 1930 and will require a servitude of 100 ft. in width [see sketch map at beginning of report on Line 2 for clarification of the location of this extension]. Plan forwarded.
- December 7 DIA tells H-Q to contact Indian Agent and proceed to obtain settlements with individual owners and with Band Council (for right to cross a roadway, no common lands involved). Required r/w will be made available through Sec. 48 of Indian Act.
DIA tells Agent that H-Q will require separate agreement from each owner and a BCR for right to cross Laprairie road and farm roads which r/w will cross.

1949

- January 14 H-Q tells DIA that they have powers of expropriation under Sec. 33 of Chapter 98A of RSQ, 1941.
- March 22 H-Q advises DIA that they have been able to reach agreements with all locatees except one.² Locatee who would not agree was Louis Dailleboust, owner of property in five different lots to be crossed by proposed r/w. H-Q claims Dailleboust would accept \$900 sum offered by H-Q but did not want money to be deposited with DIA (due to delay in release of funds).
- May 25 SG of Canada instructs H-Q to send plan of r/w on tracing linen.
- June 11 BCR passes allowing H-Q to pass overhead line over abandoned public road between IR Lots 244 and 245 Montreal-NY Highway to old Laprairie road.
- June 21 Indian Agent advises that Louis Dailleboust does not want to accept \$900 as sum inadequate; cheque returned.
- June 27 H-Q tells DIA they want to begin construction but Louis Dailleboust continues to refuse to accept offered compensation. They again forward a cheque for \$900 and agreement forms and request DIA "take whatever measures [DIA] consider[s] appropriate in the circumstances".
H-Q tells DIA that they have obtained "perpetual servitude agreements covering rights over a right-of-way 100 feet in width" from the other locatees (four individuals) for total sum of \$1,150 and make formal application for OC granting right to construct and operate line. Note: only one of these agreements was on the DIA file dealing with this transaction (agreement with Joseph Delaronde made March 3, 1949). Agreement text states that locatee agrees to accept compensation as full payment for a perpetual servitude.
- September 1 DIA notifies H-Q that they can enter IR to begin construction. Notes that final permission to be granted by OC and, if Louis Dailleboust not settled with, may be necessary that OC provides for compensation being fixed by arbitration.
- October 4 SG's office prepares technical description of r/w.
- December 23 H-Q reports that they are constructing line and will soon need to enter Louis Dailleboust's property. Report that "it is useless to attempt to fix a settlement

² There is no mention made at any time during the planning stage or conclusion of this transaction of a percentage of compensation paid for located lands going to the Band in consideration of their communal interest.

with Mr. Dailleboust and, for such purpose, we are agreeable to the indemnity being determined by arbitration". Ask that OC be passed.

1950

- February 8 DIA returns \$900 cheque which H-Q had forwarded as compensation for Dailleboust.
DIA asks their Legal Advisor for direction on how to proceed with Dailleboust matter, noting that Sec. 48 of Indian Act provides that determination of compensation is to be governed by requirements applicable in ordinary cases and that Minister is to name arbitrator on behalf of Indians and act on their behalf in matter of a settlement. Ask for assistance in drafting submission to council to provide for arbitration. [No reply to this request present on file.]
- February 9 DIA asks H-Q to explain procedure to be followed for determination of compensation re Dailleboust case stating "We have no acquaintance with your procedure in ordinary cases outside of Indian Reserves."
- March 17 H-Q explains procedure they are accustomed to following in expropriation cases.
- March 20 DIA writes Louis Dailleboust stating that "We are recommending that authority be granted to the Commission for the right of way without fixing the amount of compensation to be paid to you for the line". H-Q has powers of expropriation and, under Sec. 48 of Indian Act, these can be applied to IR lands by an OC. Advises that they will recommend that OC be passed and that amount of compensation to be paid to Dailleboust be determined by proceedings under Quebec Hydro Electric Commission Act and Civil Code. "As such proceedings are usually protracted and require the production of expert evidence of value, as well as being expensive, it is recommended that you should now, before proceedings are instituted, attempt to reach a reasonable settlement with" H-Q.
- March 27 DIA memo to file notes that construction equipment is standing by on Dailleboust property and that H-Q believed they could enter property on authority of DIA Director's September 1, 1949 letter; however, should be by authority of OC under Sec. 48 of Indian Act. Notes that offer to Dailleboust appears, on lineal foot basis, to be lower than those made to other owners. H-Q has appointment with Dailleboust's lawyer, Stein, who asks \$3,500.
- March 31 OC (PC #1605) passes. Pursuant to Sec. 48 of Indian Act grant of r/w (consisting of right to place and maintain electric transmission line) made to H-Q. Compensation to be paid to Louis Dailleboust to be fixed by proceedings under Quebec Hydro Electric Commission Act, SQ, and Code of Civil Procedure.
- April 12 H-Q reports that agreement reached with Louis Dailleboust for \$1,350. Paid out in June 1950.
- April 25 DIA forwards H-Q a "form of agreement to permit the right of way".
- June 1 Memorandum of Agreement executed. Parties are Minister of Indian Affairs as representative of the King of first part and H-Q of second part. Refers to OC of March 31, 1950, and lists compensation paid to five owners affected. States "Minister hereby grants to the Commission permission to place, replace, maintain and operate a line of steel transmission towers and wires, cables and other apparatus for an electric transmission line".

1955-1956 About 1,350 acres of IR taken for seaway purposes by SLSA. A portion of the servitude obtained by CRM&P in 1930 and all of the extension obtained in 1950 (both are 120 kv power trans. lines) are within the lands taken. H-Q relocates both lines within the expropriated area to accommodate SLSA's construction of seaway canal.

1959

- April 15 H-Q obtains Licence No. 63-51 from SLSA to operate the two relocated 120 kv lines, with 20 towers supporting said lines (Licence made out in April 1962 but

to be in effect beginning April 15, 1959).³ Rental monies are paid to SLSA by H-Q⁴; about 31.3 acres or 40.37 sq. arp. covered by licence.

1964
In the context of discussions about the return of lands surplus to SLSA's needs, MCK asserts their contention that SLSA should not be able to turn lands over to Province of Quebec as SLSA empowered to expropriate for seaway purposes only.

1966
September OC transfers about 250 acres under SLS lot numbers 1, 2 and 3 to DIA. Portion of easternmost 120 kv transmission line runs adjacent to SLS 1-- property on which servitude is located, and which is under Licence No. 63-51, is *not* within the lands transferred.

1972
July C. L. Mercier instructed by SG to survey SLS lots 7 through 15. He is told to survey the power line r/w outlined in red on a plan transmitted with instructions. The r/w shown on said plan is for the two 120 kv lines within the area which SLSA had expropriated. Mercier's survey plans show the lands occupied by the 120 kv lines as being under a servitude to H-Q (Licence 63-51).

November DIA Ottawa told by Quebec Region, DIA, that survey work almost completed.

1973
May C. L. Mercier given supplementary instructions, this time to survey SLS lots 18 to 25. Again, Mercier's survey plans show the lands on which the 120 kv lines are situated as being under a servitude to H-Q (Licence 63-51).

1976
October OC 1976-2662 transfers more than 553 acres taken for seaway purposes back to DIA. Lands transferred back are SLS lots numbers 4 through 26. The OC stated that SLSA was reserving a servitude across SLS 4 for a power line. This is not related to Line 2. Excluded from the property transferred were the lands traversed by the 120 kv lines under licence to H-Q by SLSA.

1977
August MCK Legal Counsel inquires whether servitude mentioned in OC 1976-2662 was registered. DIA mistakenly believes that November 1972 report from Quebec Region, that survey work (presumably Mercier's) in connection with a Hydro Quebec right-of-way was completed, somehow relates to servitude mentioned in OC 1976-2662.⁵

November 28 DIA internal memo expresses opinion that when SLSA transferred back lands which were surplus to their needs, hydro rights-of-way would be included in the lands to be transferred. DIA would then negotiate with H-Q directly for servitudes.

December 16 DIA writes to SG stating that they are negotiating with SLSA for transfer of lands to DIA which are encumbered by a servitude to H-Q and when transfer made, DIA will make a r/w agreement with H-Q.

1978
January SG's office makes description of lands to be included in a servitude to H-Q. Said description states that lands total about 35 acres and are shown on particular CLSR Plans as being adjacent to SLS lots 8 to 13 and SLS lots 22 to 25 inclusive. The CLSR plans mentioned are those done by Surveyor C. L. Mercier. [It is important to note that the lands shown as being under a servitude to H-Q are the two 120 kv lines, *along with* a small portion of land traversed by a 315 kv line north of seaway canal. This line (generally known as Line 1) is dealt with in a separate report.]

February DIA writes SLSA inquiring if SLSA had granted a servitude to H-Q over the approximately 35 acres excluded from transfer to DIA in OCs of 1966 and 1976. DIA asks if SLSA was prepared to transfer the lands to DIA. SLSA

³ It is stated on the licence document that the "date of authorizing Order in Council" was "July 21, 1955." The only OC extant of this date concerning SLSA (O.C.P.C. 1955-1090) pertains to the Minister of Finance making loans to the SLSA.

⁴ As of April 15, 1996, H-Q has paid \$93,975. to SLSA under Licence No. 63-51.

⁵ SLS Lot 4 was not surveyed by Mercier. He surveyed SLS Lots 7-15, 18-25 incl.

replies that H-Q holds licence [Licence No. 63-51] from SLSA covering right to erect and maintain the transmission line and that H-Q has refused to sign any further agreement.

October 12 Lands transferred to DIA by OCs in 1966 and 1976, namely SLS lots 1 through 26, are returned to IR status by OC 1978-3105.⁶

1979

November 28 DIA writes to Quebec Region (DIA). Substance of letter clearly indicates DIA's confusion about the transmission lines within the lands expropriated by SLSA. Specifically, DIA under impression that 35 acres referred to earlier covers the same property as a 1972 permit between MCK and H-Q. [This May 1972 permit relates to the 315 kv lines (Line 1) which, again, is dealt with in a separate report. DIA's confusion apparently stems from fact that they lost plan submitted with said 1972 permit.]

1996

October Sophie Yale, Notary, Civil Litigation and Real Property Law (Quebec) Section, DIA, writes legal opinion re status of Line 2. Opinion based largely on research conducted by her office's notary at the Laprairie registry office. Briefly, her opinion is that OC of May 29, 1930 (PC #1141) authorized CRM&P to expropriate a r/w on IR but that they did not follow the proper expropriation procedure. Yale contends that CRM&P *did* have powers of expropriation and explains procedure she believes they should have followed. States that OC PC #1141 could not in itself confer title to CRM&P. With regard to extension of Line 2 authorized by OC PC #1605 on March 31, 1950, Yale believes that H-Q also failed to follow correct expropriation procedure. She repeats earlier notion that OC, in itself, cannot confer title to corporation.

⁶ OC stated that SLSA was reserving a servitude across SLS 4 for a power line. Again, this is not related to Line 2. Lands covered by Licence 63-51 adjacent to the lots returned to IR status are still held by SLSA.

**APPLICATION MADE TO RUN A POWER TRANSMISSION LINE RIGHT-OF-WAY
ACROSS KAHNAWAKE, 1929-1930**

1. On July 23, 1929, John T. Hackett of the legal firm Foster, Place, Hackett et al, of Montreal, wrote to D. Robertson, Chief Surveyor, Indian Affairs, on behalf of their clients, Cedars Rapids Manufacturing and Power Co., regarding a projected transmission line which would cross over the Caughnawaga Indian Reserve.

I have learned that the projected transmission line would traverse the Reserve on the line indicated on the blue print which I gave to Mr Williams [A. S. Williams, Solicitor for the Department of Indian Affairs] last night for a distance of approximately 30,000 feet. Towers about 25 ft. square at their base being erected [sic] every 900 ft., it would be necessary to provide for the erection of about thirty-four towers.

The Company requires but a servitude over the land about sixty-five feet wide. The land itself would be in no way affected, except at points where the towers were erected, and by such occasional patrol as proper care of the line might entail.

The allotment of compensation is not without its difficulties, due to the irregular shape of the lots over which the line will be run. In other places where lots were of uniform size the Company has paid Twenty-five dollars (\$25.00) to each proprietor, which he retained for the servitude where no tower was erected on his property. If it happened that one or more towers were erected on his land, he received Forty dollars (\$40.00 per tower, on account of which the Twenty-five dollars (\$25.00) was applied.

When I speak to you tomorrow morning, I would be glad to know your views on the situation.

The Act to which I referred Mr. Williams is "An Act Respecting the Quebec Public Service Commission," Chap. 17, R. S. Q., 1925. I have not had an opportunity of ascertaining whether or not it would have jurisdiction in this case.

[Document No. 2]

2. J. D. McLean, the Assistant Deputy and Secretary, Department of Indian Affairs, advised Hackett immediately that the power company would have to submit a formal application, along with a plan showing the required right-of-way, and agree upon compensation with each lot owner affected to be confirmed by a signed acceptance agreement. It was noted that the proportion of compensation representing the band interest in the land was usually 5% of the total, sometimes reduced by authority of a BCR.

In reply to your letter of the 23rd instant addressed to Mr. D. Robertson, Chief Surveyor of the Department and with reference to your recent conversation with Mr. Williams, the Departmental Solicitor, in connection with certain privileges required by a power company through the Caughnawaga Indian reserve, I have to advise you that in order for the Company to acquire privileges over a right of way through the reserve, it is necessary for the Company to make formal application, accompanied by a plan on tracing linen and two blueprints of a survey of the centre line, showing bearings and distances of the several courses and the width of the right of way required, with such ties as will enable the Department to plot its location on the departmental plans. The plan should be signed by a Quebec Land Surveyor. It should indicate the extent of the right of way in each lot and individual Indian holding, giving the area required within the lot. It should indicate, if possible the position of poles or towers sufficiently accurately to show in which lot or Indian holding they are to be located.

One copy of the blueprint above mentioned should be sent direct to the Indian Agent Mr. L. Letourneau, St. Constant, Que., and arrangements should be made for a representative of the Company to accompany the Indian

Agent and interview each individual concerned, with a view to arriving at a compensation for the privileges required which would be satisfactory to the owner and acceptable to the Company. In each case where a price is agreed upon, an acceptance by the Indian concerned, witnessed by the Indian Agent, should be obtained. In arriving at the compensation to be paid, it should be borne in mind that a proportion of the compensation represents the band interest in the land and is held by the Department in the Capital funds of the band. The amount so deducted is usually 5% of the total compensation but is sometimes reduced by the Department on a resolution of the Council of the band.

When these negotiations are [page torn]
Agent will make his report to the Department [page torn]
such acceptance as may have been obtained. [The Com]pany's application should contain evidence as to the powers of expropriation which it may have under the Statutes of the Dominion or the Province, and in order that expropriation may be permitted by His Excellency the Governor General [in] Council under Section 48 of the Indian Act, the application should set forth such evidence to show that the privileges required are properly necessary.

I may state that the customary procedure of the Department in dealing with privileges required for power transmission lines is to grant an easement over a specifi[ed] width of right of way at a rate per acre and in addition [to] demand payment for all Indian improvements, crops etc. wh[ich] should be damaged by the construction of the line. This easement gives the right to construct, operate and ma[intain?] but does not permit the right of way to be fenced and re[tains?] for the use of the Indians such of the land within the r[ight] of way as is not occupied by poles and towers.

This letter may be taken as authority for the Co[mpany] to enter on the reserve for the purpose of survey but ent[ry?] may not be made for the purpose of construction until an [arrangement?] has been arrived at with the Department regarding [the] compensation.

In determining the position of the power line ev[ery] effort which would properly be consistent with economy in construction should be made by the Company to locate the line [ad]joining existing rights of way of railways, power lines and [pro]vincial roads thereby making it necessary to acquire a minimum width of right of way from individual Indians.

[Document No. 3]

3. On January 7, 1930, Cedars Rapids Manufacturing and Power Co. sent a formal application in the form of a petition to the Department of Indian Affairs for a "perpetual easement or servitude and right to erect two transmission lines and telephone lines across Kanawake Indian Reserve." The strip of land required was stated to be 192 feet (one French arpent) wide and 27,000 feet long--a total area of 119 acres or 141 square arpents. The petition noted that the Company had paid an average price of \$30 per square arpent for lands outside of the reserve and claimed that said amount was fair compensation for the reserve lands.

CANADA
PROVINCE OF QUEBEC

TO THE DEPARTMENT OF INDIAN AFFAIRS - OTTAWA

THE PETITION OF THE CEDARS RAPIDS MANUFACTURING AND POWER COMPANY, HEREIN ACTING AND REPRESENTED BY THE UNDERSIGNED, ITS ATTORNEYS, HUMBLY SHEWETH AS FOLLOWS:

1. THAT your petitioner was incorporated by the Act of the Parliament of Canada IV EDWARD VII, Ch. 65, and Amending Acts;
2. THAT your Petitioner is engaged in the business of the production and the transmission of electric power to the public;
3. THAT in order to obtain the necessary supply of power at its sub-station in Montreal to meet the requirements of your Petitioner's customers, it is essential that your Petitioner construct a dual system of transmission lines

and telephone lines from its Cedars Rapids Power House and from the Power House to be erected at Beauharnois by the Beauharnois Light, Heat and Power Company to the Atwater Sub-Station of Petitioner in the City of Montreal:

4. **THAT** it is necessary to construct the proposed transmission and telephone lines across the Kanawake Indian Reserve in the direction and to the extent set forth in the Blue Print No. RZ-100001¹, labelled with the letter "A" for identification and attached to the present Petition to form part hereof;

5. **THAT** the width of the strip of land required by your Petitioner is one hundred and ninety-two (192) feet (one arpent) and the length thereof is approximately twenty-seven thousand (27,000) feet, a total area being required therefor of one hundred and nineteen (119) acres, or one hundred and forty-one (141) square arpents, across the Kanawake Indian Reserve;

6. **THAT** your Petitioner has examined the Official Plans and Records of Title of the Kanawake Indian Reserve and notwithstanding diligent search has been unable to ascertain the names of those owning or interested in the lands across which the said transmission and telephone lines should be constructed;

7. **THAT** in acquiring the easements or servitudes for its lines up to the border of the Kanawake Indian Reserve your Petitioner has paid an average price of thirty dollars (\$30.00) per square arpent for land which previously was used as farm lands and was under cultivation;

8. **THAT** only a small portion of the land on the Kanawake Indian Reserve which your Petitioner desires to traverse is under cultivation or has any value other than wild pasture land;

9. **THAT** your Petitioner will require to erect approximately twenty-eight (28) towers on each transmission line across the said reserve each tower in each line being situated approximately one thousand (1000) feet from the other in the same line; the said towers to be substantially of the design as shown in the Print No. LSZ-10207, labelled with the letter "B" for identification and attached to the present Petition to form part hereof;

10. **THAT** the property over which your Petitioner desires an easement or servitude will not be fenced and the wires of the proposed transmission lines will not be nearer the ground than approximately twenty-seven (27) feet, thereby permitting free and safe circulation and the cultivation and use of the lands under the said lines;

11. **THAT** it is urgent that your Petitioner be permitted to start the construction of the said line or lines as soon as possible;

12. **THAT** your Petitioner transmits with the present Petition a cheque for four thousand two hundred and thirty dollars (\$4230.00) being the fair and reasonable price of thirty dollars (\$30.00) per square arpent for the right of a perpetual easement or servitude for the said dual transmission and telephone lines across the Kanawake Indian Reserve, with the right to cut down or trim such trees or bushes as may be necessary to construct the said line or lines, and with the right of access to the said lines to your Petitioner at all times for the purposes of repairing, adjusting or maintaining the same;²

WHEREFORE your Petitioner prays that the Department of Indian Affairs do grant it a perpetual easement or servitude and right to erect two transmission lines and telephone lines across the Kanawake Indian Reserve in the manner set forth in the Blue Print "A" attached hereto and subject to the approval of the Quebec Public Service Commission. The width of the property to be occupied by the said lines is to be one hundred and ninety-two (192) feet and the length thereof approximately twenty-seven thousand (27,000) feet and that the price of thirty dollars (\$30.00) per square arpent be declared to be a fair and sufficient price for the said easement or servitude and that the amount of four thousand two hundred and thirty dollars (\$4230.00) paid by your Petitioner herewith be accepted in full and final settlement of the said price, to be held by the Department or distributed among the members of the Band according to law.

[Document No. 4]

¹ An amended version of this plan is No. 1 (CLSR M2364) in the collection of plans submitted with this report.

² The historical record shows that, in accordance with this request, Cedars Rapids was eventually granted a perpetual grant of occupation in return for a one-time compensation payment. During the same time period, the Department of Indian Affairs is known to have granted fixed-term easements to power companies seeking the right to erect and maintain transmission lines on Indian Reserves. An example of such an easement at Six Nations IR No. 40 is cited in Appendix B of this report.

The covering letter enclosing the petition transmitted a cheque in the amount of \$4,230.00.
[Document No. 5.]

4. On January 15, 1930, A. F. MacKenzie, Acting Assistant Deputy and Secretary, Indian Affairs, wrote to L. Letourneau, Indian Agent, advising of the application and reporting that one of the company's legal representatives had indicated that the company would not be able to locate the exact dividing line between the affected lots.

... I have to advise you that one of the members of the firm recently called at the Department and stated that they had interviewed you in connection with the power line and that as the line for the main part was located through unimproved land in the reserve, it was impossible to ascertain the dividing line between the different lots through which the line passes. It was also requested that as the Company was anxious to commence construction at an early date, that they be permitted to deposit with the Department an amount to cover the probable compensation and be given authority to proceed with the construction, leaving final adjustment to be made when the line is completed. Since then the Department has received a formal application from these Solicitors, as representatives of the Cedar Rapids Manufacturing & Power Company and the application requested a width of 192 feet (one French arpent) throughout the full length of the line through the reserve.

I should like you to inform me if in your opinion the contention of the Company is correct as regards the impossibility of their engineers indicating on the plan of the power line the chainages at which this line would cross the different lot lines in the reserve. It is thought that possibly these crossings could be shown in a considerable number of cases, although it might be impossible as regards some of the lots.

The Department is disposed to agree to the Company's request that they be permitted to construct upon making a deposit with the Department, pending final determination of the compensation and I have to ask you to inform the Department as to what rate per square arpent you consider would be a just demand to make on the Company for the purpose of computing the amount of this deposit. Please give this your immediate attention.

[Document No. 6]

5. Letourneau replied two days later that the company should be able to locate the line for the right-of-way and that the value of the land would not be less than \$400 per acre. At this point however, the agent believed that the right-of-way crossed a different area of the reserve.³ [Document No. 7.] On January 23, 1930, MacKenzie informed Letourneau that the power line in question would enter the reserve at Lot 151 and proceed in a northeasterly direction to its intersection with the Caughnawaga-LaTortue Road in Lot 271A and from there to the river bank through Lot 268.

...
It is not the intention of the Department to permit the Company to fence the right of way, in order that the land involved may remain accessible to the Indian holders, with the exception of those portions where it will be required to erect the towers. As this is a double power line, there will be a double row of towers erected along the right of way, the bases of which occupy about 20 sq. ft and the towers will be placed approximately 1000 ft apart. You will readily see, therefore, that the compensation for the individual lots would vary considerably; some lots will be practically undamaged apart from the clearing of the right of way and others will have portions occupied by the towers. It is therefore thought that settlement should be arranged between

³ Letourneau's confusion here stemmed from the fact that the same legal firm had made representations on behalf of a power company wishing to obtain a right-of-way for a transmission line running through Caughnawaga lands in a southeasterly direction from Lots 214 to 477. No action was taken in that matter. [Documents are on NAC RG 10 Vol. 3165, File 380,535-2, Reel C-11333.]

the Company and the Indian owners affected at a price considerably lower than the full value of the land per acre.⁴

...

[Document No. 9]

6. On the same day, January 23, 1930, MacKenzie wrote to Foster, Place, Hackett et al in order to acknowledge the receipt of the petition for the proposed right-of-way through Caughnawaga. MacKenzie provided direction on how the power company's engineers could accurately determine the dividing lines between the lots that would be affected by the line. He also advised that the compensation proposed by the company was inadequate and, if they wished to enter the reserve to begin construction, they would have to forward a deposit of \$25,000 (in addition to the \$4,230 sent with the petition).

... I have to advise you that the Department is in receipt of a report from the local Indian Agent that he does not consider it impossible for the company's engineers to ascertain the dividing line between the different lots affected and from the information shown on the plan which accompanied your petition, it would appear that the chainage of these dividing lines could be accurately located and shown on the plan. While it is admitted that some of the lot lines may be unfenced and that secondary fences may be in position within the limits of a lot, from the Department's knowledge of this reserve there should be no difficulty in the Company's engineers ascertaining the name of the Indian who claims ownership on each side of the fences which are now shown on the plan. These Indians are also familiar with the numbers of their lots and could inform the engineers of the lot numbers.

In addition to the chainage of these fence lines, chainage should be shown to the centre line of the different roads crossed by the right of way and also the boundaries and centre line of the right of way to the centre of that road leading from Huntingdon (the Primeau Road) which enters the reserve approximately 2000 ft. South of the point of entrance of the power line right of way.

I am enclosing a blueprint showing the survey posts in place at the limit between Lots 442 and 500 and a tie could easily be obtained from these posts to the centre of the power line by giving bearing chainage along the centre of the open road to that point. This tie is requested.

I am also enclosing a blueprint of the reserve and it is considered that if the road crossing chainages and such fence lot line chainages as are found are laid out on this blueprint, the Company's engineers will be able to prepare a plan which will show the acreage included within each of the Indian lot holdings. ... It is also required that the plan show the location of the proposed towers in such a manner that it could be determined in what lot they will be erected. I have to ask you to arrange to have this information obtained and the plan supplied at the earliest possible date.

I have also to inform you that the Department is unable to accept the rate of compensation suggested by the Company, as it is by no means commensurate with values received for other rights of way through this reserve. Should, as you suggest, your Company wish to enter for construction before the compensation is finally determined, it will be necessary to deposit with the Department the sum of \$25,000.00, in addition to the amount already received. The total amount will be placed to the credit of the Company and the account adjusted when the amount of compensation is definitely determined.

In conclusion, I can only suggest that the Company will probably find it much more expeditious to arrive at a settlement in the manner outlined in my letter of the 24th July last.

[Document No. 10]

⁴ Three years later, instructions to Indian agents indicate that the Department considered long term easements should be paid for at "almost the full value of the land". See Appendix A for this 1933 circular.

7. On January 18, 1930, the Québec Public Service Commission had ordered that the Cedars Rapids Manufacturing & Power Company be permitted to construct and operate two transmission lines and a private telephone line between Cedars Rapids and Verdun finding "that such construction is necessary or convenient for the public benefit." The operation and construction were to conform to an engineer's report annexed to the order. [Document No. 8.]
8. On February 20, 1930, ten of the locatees and one estate gave Frank McDonald Jacobs power of attorney to act for them in relation to "the transmission lines". Jacobs was to receive 10% of the settlements in return for his services. The names appearing on the agreement were (spellings are as they appear in the document): Cecilia Jacco, Amrie Montour, Mrs. John Simpson, Mrs. Phaby Stacey, Frank Ryce, Frank T. Jacobs, Mrs. J. McCumber, John Beauvais, Louis Goodleaf, A. V. Jacobs "as witness". [Document No. 11.]
9. Caughnawaga Chief Peter Williams sent an inquiry to the Indian Affairs Department on the 27th of February 1930. He asked to be advised whether the power company had powers of expropriation:

Please request the Deputy Supt. Gen Dr. Scott to let you know if the Cedar Electric Co [sic] or M.H.L and P. Co have power to expropriate lands on reserve.

I don't seem to understand what the Depts. intentions are.

The above Co. informs me that they do not intend to expropriate any lands outside of the base of each proposed tower, and the planting of poles for telephone purposes, also the right of way of wires. Please let me know as soon as possible, as the holders want to know, and oblige.

[Document No. 12]

10. A. F. MacKenzie, Acting Assistant Deputy and Secretary, Department of Indian Affairs, addressed the following response to "Chief Councillor Williams" on March 7, 1930.

In reply to your letter of the 27th ultimo, I have to advise you that the Cedar Rapids Manufacturing and Power Company can under Section 48 of the Indian Act be permitted by His Excellency the Governor General in Council to expropriate such lands as are required for a right of way in connection with the construction, operation and maintenance of a power line through an Indian reserve, if the Company produces sufficient evidence to satisfy His Excellency in Council that such right of way is necessary for the proper and lawful operation of the power company.

The application made by the Company to the Department did not request a sale of the lands necessary in the Caughnawaga Indian reserve and it is the intention of the Department if it is found necessary to construct this power line, to grant the Company an easement over the lands required. This is the policy usually adopted by the Department in dealing with applications of power companies for rights of way through Indian reserves [emphasis added]. The easement stipulates that the Company is not to fence the right of way and the land will be available for use by the band or the individual Indian owners, except those portions actually occupied by towers or poles. The nature of the easement of course gives the Company the right at all times to enter upon the right of way for the purpose of the proper operation and maintenance of their line.

[Document No. 14]

The legal firm Casgrain & McDougall of Montreal advised the Deputy Superintendent General of Indian Affairs, D. C. Scott, that they had been consulted by a number of locatees from Caughnawaga regarding the proposed transmission line. They indicated that the owners had been approached by agents of the power company to get them to execute "Deeds of Servitude and Sale". Their letter of March 6, 1930, reads:

We have been consulted on behalf of a number of the owners of land on the Caughnawaga Indian Reserve in regard to the proposed erection of a transmission line by the Cedars Rapids Manufacturing & Power Company which it is proposed should cross the Indian Reserve about a quarter of a mile south of the right of way of the New York Central Railway. We understand that agents of the Power Company have approached the owners of these lands with a view to having them execute Deeds of Servitude and Sale covering the erection of such line. The owners involved, acting through Mr. Frank McD. Jacobs, consider that the amounts offered by the Power Company are insufficient and we have been asked to enquire whether the Department has consented to the taking or using of these lands for the purposes indicated under the provisions of Section 48 of the Indian Act.

Our information is that the amounts offered in compensation for the property to be taken or used are based on the valuation of approximately \$40 an acre. The lands affected will amount to about sixty acres through the reserve. In view of amounts recently paid by other public utility enterprises crossing the reserve, notably the Canada Light & Power Company, the amount so offered is clearly inadequate. The average price per acre paid by the Canada Light & Power Company was \$187 as indicated in memorandum forwarded to you by Mr. Jacobs under date of February 4, 1930.

In these circumstances, the owners involved do not feel disposed to accept the offer made to them by the Cedars Rapids Manufacturing & Power Company and we should be glad to know the attitude of the Department, and, if possible, the course of action which is proposed to be adopted by the Company.

[Document No. 13]

12. MacKenzie replied to Casgrain and McDougall five days later. He provided an update on the status of the Cedars Rapids Manufacturing & Power Co.'s application and stated that the Department intended to grant the requested easement.

... I have to advise you that when the Cedars Rapids Manufacturing and Power Company advised the Department they wished to construct a power line through the Caughnawaga Indian reserve, the Company was given authority to enter the reserve for the purpose of surveying the location of the proposed line and later that Company forwarded a formal application for the right of way, accompanied by a preliminary plan of survey. The preliminary plan did not contain sufficient information for the Department to determine the various holdings affected and the Company was requested to supply another plan with the additional information on it which the Department would require in order to determine accurately to what extent the different holdings in this reserve would be affected.

As it is the intention of the Department to obtain permission to grant an easement to the Company for the construction, operation and maintenance of their power line in the event of the Company satisfying the Department that such right of way is necessary for the proper and lawful operation of the power Company and in the event of the Department receiving from the Company what it considers a fair compensation for the privileges required, the Department advised the Agents of the Company that they might negotiate with the various individual Indian holders concerned with a view to arriving at a compensation which would be acceptable to the Company and to the individual Indians and in such cases to obtain from these Indians an agreement to accept the amount agreed upon. The Department has not yet

received from the Company the amended plan but it is understood it is now under preparation and will be filed with the Department shortly.

In connection with your comment as to the price paid by the Canada Light and Power Company, I may say that this Company purchased the right of way whereas in the present instance it is not a sale but an easement which is proposed to be granted to the Company. This latter will leave the land available for use by the band or the individual Indian owners, except those portions actually occupied by towers or poles. The nature of this easement will give the Company permission to enter on the right of way for the proper operation and maintenance of their line but will not permit them to fence it.

As to your statement that the Company has offered compensation based on a valuation of \$40.00 per acre, I have to advise you that although the Department has not as yet made an estimate of what compensation should be and will not do so until after receipt of the final plan, it would not consider a payment of \$40.00 an acre sufficient compensation for the privileges which the company requires in this reserve.

[Document No. 15]

13. A supplementary petition was forwarded to Indian Affairs by Cedars Rapids' attorneys Foster, Place, Hackett et al to the Department on March 12, 1930. Permission to enter the reserve and to have the Public Service Commission proceed to fix the compensation was requested.

CANADA
PROVINCE OF QUEBEC

TO THE DEPARTMENT OF INDIAN AFFAIRS - OTTAWA

THE SUPPLEMENTARY PETITION OF THE CEDARS RAPIDS
MANUFACTURING AND POWER COMPANY, HEREIN ACTING AND
REPRESENTED BY THE UNDERSIGNED, ITS ATTORNEYS, HUMBLY SHEWETH
AS FOLLOWS:

1. THAT your Petitioner did on January 7th, 1930, address a Petition to the Department of Indian Affairs, praying for an easement or servitude to erect and maintain a system of dual transmission lines and a telephone line across the Kanawake Indian Reserve;
2. THAT your Petitioner did at the time of filing the said Petition deposit with the Department of Indian Affairs the sum of four thousand two hundred and thirty dollars (\$4230.00) being in its opinion a fair and reasonable price for the said easement or servitude across the Kanawake Indian Reserve;
3. THAT your Petitioner was advised by the Department of Indian Affairs by letter dated January 23rd, 1930, that the said deposit of four thousand two hundred and thirty dollars (\$4230.00) was insufficient and was further advised and counselled to continue negotiations with the Indians on the said Reserve in an effort to arrive at a settlement of the amount to be paid to the various owners for the said easement or servitude;
4. THAT your Petitioner has been unable despite repeated endeavors, to arrive at any amicable arrangement with the various properties to be crossed, as to the amount to be paid as consideration for the said easement or servitude;
5. THAT the amounts demanded by the owners of the said properties are excessive and exaggerated and beyond all reasonable value for the land over which the said easement or servitude is required;
6. THAT your Petitioner transmits herewith a duplicate detailed plan, showing the land over which an easement or servitude is required, the names of the owners thereof as obtained from the Official Records, the Indian Agent at the Kanawake Indian Reserve, and from the various owners themselves, and the extent of the property of each owner to be covered by the said easement or servitude;
7. THAT in order to permit the completion of the construction of the said line or lines at the earliest possible moment and in order to obtain the necessary permission for the construction of the said lines across the River St. Lawrence, it is essential that your Petitioner obtain from the Department

of Indian Affairs a permit to enter on the said reservation and do such acts or work as may be necessary or incidental to the construction of the said lines; 8. THAT your Petitioner, as advised by the said letter dated January 23rd, 1930, from the Department of Indian Affairs, transmits herewith the sum of twenty-five thousand dollars (\$25,000.00), it being distinctly understood, however, that the said amount of twenty-five thousand dollars (\$25,000.00) together with the previous deposit of four thousand two hundred and thirty dollars (\$4230.00) hereinabove mentioned, are not in any way to be considered as an admission by your Petitioner that the said easement or servitude required is worth any amount in excess of the said sum of four thousand two hundred and thirty dollars (\$4230.) previously deposited, but are made solely for the purposes mentioned in paragraph 7 hereof;

WHEREFORE your Petitioner prays that the Department of Indian Affairs do grant to it permission to enter upon the said Kanawake Indian Reserve and to erect the said system of dual transmission lines and telephone line; that the Department of Indian Affairs do submit to your Petitioner a statement showing the various amounts which in its opinion should be paid to each of the various owners of the said lands, to be subject to the said easement or servitude, and that in the event of the said amounts so fixed by the Department of Indian Affairs being considered by your Petitioner as excessive, that permission be given to it to petition the Public Service Commission of the Province of Quebec to fix and determine the compensation to be paid to the persons interested for the said easement or servitude across the Kanawake Indian Reserve; upon the express condition and under the reserve that any amount deposited by your Petitioner with the said Department of Indian Affairs in excess of four thousand two hundred and thirty dollars (\$4230.00) be not considered as a tender or offer for the said lands affected or to be affected by the said easement or servitude, or as bearing any relation to the price and value thereof, but solely for the purpose of obtaining the consent of the said Department of Indian Affairs to enter upon the said Reserve, to pursue its works therein, pending the determination by competent authority of the value of the said lands; and your Petitioner will every pray.

[Document No. 16]

14. The legal firm's covering letter noted that a \$25,000 cheque was enclosed. They also forwarded a list of the sums the company had paid for lands outside of the reserve, stating:

...
We also transmit on behalf of our client, a statement showing the amounts paid for the servitude over lands adjacent to the Reservation. You will notice that most of these rights were obtained over land used as farm land, whereas nearly all the land on the Reservation is uncultivated.

We respectfully submit that the price to be paid for the servitude over the Reservation lands should be less than that paid beyond the limits thereof.

The attached list of non-reserve lands obtained for the servitude reads:

LIST OF SERVITUDES
PURCHASED BY A. W. SULLIVAN, Q.L.S., C.E.
FOR
THE CEDARS RAPIDS MFG. & POWER COMPANY

County of Chateaugay

Lot No.	Proprietor	Acreage	No. Towers	No. Poles	Purchase Price	Remarks
47	Irvin Watt	2.06	-	3)		
48	"	2.18	2	2)	250.00	\$58.80 per acre
49	Mrs. Agnes Gentle	2.24	2	5	160.00	71.40 "
52	Alex. Bourcier	2.30	-	2	40.00	17.40
53	Charles Lang	2.58	2	3	160.00	62.00
55	James Lang	1.62	2	2	160.00	98.60 special [?]
65	Joseph Reid	1.52	-	2	50.00	33.10
181	Jos. Daignault	2.65	2	3)		
185	"	3.60	4	4)		
186	"	2.34	-	3)		

187	"	2.52	2	2)	720.00	50.00
188	"	1.58	-	2)		
189	"	1.66	-	2)		
370	Edmond Marchand	3.02	2	4	250.00	Including right to cut 1 arp. maple bush

County of Beauharnois

Lot No.	Proprietor	Acreage	No. Towers	No. Poles	Purchase Price	Remarks
20	Raoul Hebert	1.96	2	2	305.00	Including right to cut 2 arp. maple bush
68	Alfred Hebert	1.69	-	2)		
69	"	1.72	2	2)	160.00	\$32.00 per acre
70	"	1.65	-	2)		
74	Osias Charlebois	1.73	2	2)		
75	"	12.80	6	14)	640.00	44.0 "
116	Josephat Pouliot	10.29	5	11)		
117	"	6.53	4	6)	720.00	42.75

N.B. The above are all cultivated farms except where noted as maple bush.

[Document No. 17]

The amended plan submitted with the supplementary petition is Plan No. 1 in the collection of plans submitted with this report (CLSR Plan M2364). It should be noted, however, that this plan was later amended.

15. Upon the receipt of the above materials, A. F. MacKenzie informed Foster, Place, Hackett et al that the Department was going to "take immediate steps to have a representative investigate the proposed right of way and make a valuation. As soon as this has been completed, you will be advised as to the amount which the Department considers should be paid." He expected that the valuation of the lands would be done before April, before which time the power company would not be able to commence construction anyway.

... I note the Company's representatives have been unable to arrive at a satisfactory agreement with the Indians as to the amounts which should be paid. The Department will take immediate steps to have a representative investigate the proposed right of way and make a valuation. As soon as this has been completed, you will be advised as to the amount which the Department considers should be paid.

... the Department is to be notified as to the date upon which the Company desires to enter the reserve for that purpose, in order that notification may be given by the Department to the Indians concerned. ...

[Document No. 18]

16. The Department's Chief Surveyor instructed surveyor W. R. White to inspect and value the right-of-way on March 15, 1930.

I am instructed to request you to proceed to Caughnawaga and to make a valuation in order to determine the compensation which should be demanded from the Cedar Rapids Manufacturing and Power Company for the privileges they require in connection with the construction of the proposed power line through that reserve, so that the Department may determine the amounts which should be paid to each of the individual Indian owners, as well as the amount which should be demanded for any common or band property which might be affected.

You will find the information concerning this application on file No. 21005-2 and herewith you are handed a copy of the detailed plan referred to in

Paragraph 6 of the Petition of the Company which accompanied their letter of the 12th Instant.

It is also desired that you endeavour to obtain from the Council of the band and the individual owners concerned their acceptance of a compensation which you consider would not only be fair to the Indians but also to the Company.

[Document No. 19]

17. Consequently, Cedars Rapids Manufacturing and Power Co. concluded agreements with most of the individual lots owners based on the Department's valuations. The company also agreed to pay 5% of the total for the Band's interest in the lands. A letter from C. S. Bagg, General Manager of The Cedars Rapids Manufacturing & Power Company, to Indian Affairs, written March 25, 1930, reported as follows [the items in italics are later additions written in pencil]:

Following negotiations with the Department of Indian Affairs with reference to its proposed lines through the Reserve, The Cedars Rapids Mfg. & Power Company has concluded an agreement with the Indian holders of property through which the lines will cross. This agreement is based on estimates suggested by Mr. White, Surveyor for the Department, and recommended by him to the Indians.

The terms of the offer from The Cedars Rapids Mfg. & Power Co. are as follows:

To pay the Indians all on the same basis of \$100.00 per acre for land affected by the servitude.

\$25.00 per acre for underbrush

\$25.00 each for every standard tower

\$45.00 each for two anchor towers

\$65.00 each for two suspension towers at the river crossing

The telephone poles will be paid for at the rate of \$5.00 each.

Any valuable timber such as Maple, Elm, Ash and Apple Trees to be paid for according to an estimate prepared by Mr. White and accepted by the Company.

At a Meeting held in the Caughnawaga Council Hall, Monday, March 24th, the following proprietors accepted the Company's offer either personally or through their attorney, and have signed the servitude forms agreeing to accept the amount stated opposite each name.

These were made out in quadruplicate -

One form for the Company

One form for the Indian Agent

One form for the Department

One form for each Indian proprietor

(left with proprietor)

One copy of the forms which have been signed has been handed to Mr. White for the Department.

<u>Names</u>	<u>Amount</u>
John Beauvais	\$1,207.50
Louis Dailleboust	100.00
Peter Dicaire (estate of)	1,792.50
Mrs. T. Dailleboust	394.75
Mitchell Deere	336.50
Michel De Lisle	441.25
Paul De LaRond	482.50
Disputed (between L. A. Jacobs and Mrs. Cecilia Jacco)	110.50
Louis Goodleaf	856.00
Mrs. Cecilia Jacco	997.25
F.T. Jacobs	447.50 [527.50 written in]
Michael Lahache	325.00
Thomas Montour	326.75

J & L Montour	36.25
Michel Montour	775.25
Lawrence Montour	130.00
Mrs. Angus Montour	510.00 [430.00 written in]
Louis Norton	52.00
Frank Rice	1648.75
Mrs. Phoebe Stacy	174.00
John Simpson (estate of) <i>paid \$150.00</i>	962.50
Louis Williams	1198.50
J. K. Woodland	26.25
John Patton	890.00
Dept. of Indian Affairs Re	
Louis Simpson	<u>575.00</u>
	14,796.50

The following proprietors have not signed servitude forms as yet but Mr. White, on behalf of the Department, has stated that the values offered by the Company to these respective individuals was fair and he has left forms with the Indian Agent to obtain their signatures.

Sak Atrenho	\$717.00
Lawrence Canadian (<i>estate Deerfoot</i>)	753.75
Dr. J.H. Jacobs	380.00
William LeClair	96.25
Lawrence Regis	692.00
Louis Snow	310.00
	722.50
Disputed (<i>Delaronde & others</i>)	<u>566.25</u>
	4237.75

All these proprietors are absent from the Reserve at present, except Mr. Louis Snow who has requested a longer period of time in order that he may be enabled to examine his property further before signing.

In cases of disputed land, Mr. White has made valuations which have been accepted by the Company and the Department is requested to hold the remuneration [sic] decided upon and to make payments to the individuals when ownership is decided.

In addition to the amounts stated opposite each name, the Company agrees to pay five (5) per cent of the total, amounting to \$950.75 [\$951.71 written in later] for the band's interest.

It is hoped the Department will approve settlement arrived at and will forthwith permit the Company to enter on construction. This permission is required immediately in order that the Company may satisfy the Department of Public Works of its interest in the lands to be used on the shore where its river crossing structures are to be located.

As the total deposit made with your Department is \$29,230.00 and the proposed settlement amounts to \$19,965.75 [written above in pencil 85.96, meaning \$19,985.96] you are requested to return to the Company the difference amounting to \$10,264.25 9,244.04.

The Company appreciates the action of the Department in sending Mr. White to assist in negotiations, which were no doubt rendered possible by his knowledge of the situation and his tact in dealing with the Indians.

[Document No. 48]

- The individual agreements forwarded to the Department were executed on a typed form and signed by the locatee, by Louis O'Sullivan, Engineer for the power company, and Indian Affairs' Surveyor W. R. White.

The following is an example of one such agreement. The portion of the text that is not in bold, italicized type is what appeared on each printed form:

I, the undersigned, *J. K. Woodland* agree to accept the sum of *twenty-six and 25/100* dollars, from The Cedars Rapids Manufacturing and Power Company, as full, final and complete payment for the right to that Company, its representatives or assigns, in perpetuity, to construct, maintain and operate, on and over my property within a width of One Hundred and Ninety (192) feet, extending on each side of a central line as surveyed on my said property, otherwise known and designed on Lot No. 248 on the General Plan of the Reserve of Caughnawaga, all towers, poles, engines, devices and means whatsoever, for the transmission of power, including the stringing and supporting of wires for any and all uses, all subject, however, to the approval of the Department of Indian Affairs.

It is understood that this concession to the Company includes the right to cut trees and brush without further compensation.

(Signature) *J. K. Woodland his x mark*
(Indian Agent) *Lorenzo Letourneau*

WITNESSES: _____

Read and interpreted by Peter Williams

[Document No. 29]

Each of the agreements had a sheet attached to them which gave a breakdown of how the compensation figure was arrived at.

Rather than reproduce the text of each of the several agreements here, the following table provides a summary of the agreements showing the name of the locatee, the rate they agreed to pay as stated in the agreement, and the lot number(s) and acreage involved. Unless indicated otherwise, the locatees signed on their own behalf:

Name of Locatee	Total Comp.	Breakdown	Lot(s)	Doc. No.
Ownership disputed Louis A. Jacobs, Mrs. Cecilia Jacco	110.50	0.99 acres @ \$100 p/ac 0.26 ac. underbrush @ \$25 p/ac 1 telephone pole @ \$5 each	222A	24
Louis Dailleboust	100.00	0.55 ac. @ \$100 p/ac 1 anchor @ \$45 each	Pt. 259	34
J. K. Woodland	26.25	0.21 ac. @ \$100 p/ac 0.21 ac. underbrush @ \$25 p/ac	248	29
Louis Williams	1198.50	9.61 ac. @ \$100 p/ac 1.10 ac. underbrush @ \$25 p/ac 6 towers @ \$25 each 12 telephone poles @ \$5 each	Pt. 155	36
Michel La Hache (Two Axe)	325.00	2.16 ac. @ \$100 p/ac 2.16 ac. underbrush @ \$25 p/ac 1 tower @ \$45 each 2 telephone poles @ \$5 each	pt. 256, pt. 259	38
Mitchell Deere	336.50	2.68 ac. @ \$100 p/ac 2.14 ac. underbrush @ \$25 p/ac 3 telephone poles @ \$5 each	369, 369A	40
Thomas Montour	326.75	2.33 ac. @ \$100 p/ac 0.35 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 3 telephone poles @ \$5 each \$20 valuable timber	194	46
J. & L. Montour	36.25	0.29 ac. @ \$100 p/ac 0.29 ac. underbrush @ \$25 p/ac	Pt. 405	30

Dept. of Indian Affairs [is Simpson] ⁵	575.00	4.60 ac. @ \$100 p/ac .60 ac. underbrush @ \$25 p/ac 3 towers @ \$25 each 5 telephone poles @ \$5 each	391, 391A, W. Pt. 381	47
Michel Delisle	441.25	2.97 ac. @ \$100 p/ac 2.97 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 4 telephone poles @ \$5 each	231	37
Estate of Peter Decaire ⁶	1792.50	7.62 ac. @ \$100 p/ac 7.62 ac. underbrush @ \$25 p/ac 4 towers @ \$25 each 8 telephone poles @ \$5 each \$700 valuable timber	195	25
Mrs. T. Dailleboust ⁷	394.75	2.77 ac. @ \$100 p/ac \$2.11 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 3 telephone poles @ \$5 each	417, Pt. 405	44
John Patton ⁸	890.00	?	382	32
Mrs. Phoebe Stacey ⁹	174.00	1.14 ac. @ \$100 p/ac 2 towers @ \$25 p/ac 2 telephone poles @ \$5 each	357	43
Frank T. Jacobs ¹⁰	447.50	3.26 ac. @ \$100 p/ac 3.26 ac. underbrush @ \$25 p/ac 1 tower @ \$25 each 3 telephone poles @ \$5 each ¹¹	Pt. 212	28
Mrs. Angus Montour ¹²	510.00	3.68 ac. @ \$100 p/ac 3.68 ac. underbrush @ \$25 p/ac 1 tower @ \$25 each 5 telephone poles @ \$5 each ¹³	211, Pt. 212	41
Executor John Simpson ¹⁴ estate	962.50	5.46 ac. @ \$100 p/ac 5.46 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 6 telephone poles @ \$5 each \$200 valuable timber	E. Pt. 381	26
Mrs. Cecilia Jacobs ¹⁵ [Jacco]	997.25	7.60 ac. @ \$100 p/ac 4.89 ac. underbrush @ \$25 p/ac 3 towers @ \$25 each 8 telephone poles @ \$5 each	222 and 223	42
Paul De Laronde ¹⁶ and Mrs. McCumber [\$ divided evenly]	482.50	3.30 ac. @ \$100 p/ac 3.30 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 4 telephone poles @ \$5 each	246	45
Louis Goodleaf ¹⁷	856.00	6.17 ac. @ \$100 p/ac 3.96 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 8 telephone poles @ \$5 each \$50 hay	416, Pt. 405	35

⁵ A letter dated May 18, 1936 from Secretary of Indian Affairs to Indian Agent Brisebois states that Simpson was only entitled to draw interest on the \$575. This was due to the fact that his father's will only gave him a life interest in the property. [Document No. 83.] Agreement signed by W. R. White, Department of Indian Affairs.

⁶ Agreement signed by Peter Williams. Copy of authorization allowing him to do so attached to agreement.

⁷ Signed by Peter Horne, who was given authority by Mrs. Dailleboust to sign.

⁸ Peter Williams signed agreement. Authorization from Patton for Williams to sign attached to agreement.

⁹ F. McDonald Jacobs signed agreement.

¹⁰ F. McDonald Jacobs signed agreement.

¹¹ \$80 added on for pt. of 212 credited to Mrs. Angus Montour.

¹² F. McDonald Jacobs signed agreement.

¹³ \$80 deducted for pt. of 212 credited to F. T. Jacobs.

¹⁴ F. McDonald Jacobs signed agreement.

¹⁵ F. McDonald Jacobs signed agreement.

¹⁶ A letter dating from July 8, 1935, by Indian Agent Brisebois stated that the heirs of Paul Delaronde refused to sign an agreement to accept sum of \$257.80 because it was not enough to cover the damages that power company had made to timber on their lots. [Document No. 82.] F. McDonald Jacobs signed agreement.

¹⁷ F. McDonald Jacobs signed agreement.

Frank Rice ¹⁸	1648.75	6.92 ac. @ \$100 p/ac 4.67 ac. underbrush @ \$25 p/ac 4 towers @ \$25 each 8 telephone poles @ \$5 each \$700 valuable timber	422, Pt. 418	27
Michel Montour ¹⁹	775.25	4.45 ac. @ \$100 p/ac 2.21 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 5 telephone poles @ \$5 each \$200 valuable timber	151	39
John Beauvais ²⁰	1207.50	4.49 ac. @ \$100 p/ac 3.34 ac. underbrush @ 25 p/ac 2 towers @ \$25 each 5 telephone poles @ \$5 each \$600 valuable timber	232, 234, 235	31
Lawrence Montour	130.00	0.80 ac. @ \$100 p/ac \$50 valuable timber (apple trees)	424, Pt. 155	33
Disputed - between Delaronde & Woodland Woodland & La Hache ²¹	566.25	3.97 ac. @ \$100 p/ac 3.97 ac. underbrush @ \$25 p/ac 2 towers @ \$25 each 4 telephone poles @ \$5 each	Pt. 246, 247, 254, 255 256, 259	50
Dr. Jacobs	380.00	1.56 ac. @ \$100 p/ac 1.56 ac. underbrush @ \$25 p/ac 1 tower @ \$25 each 2 telephone poles @ \$5 each \$150 valuable timber	392, 393	52
Lawrence Regis	692.00	5.12 ac. @ \$100 p/ac 5 ac. underbrush @ \$25 p/ac 1 tower @ \$25 each 6 telephone poles @ \$5 each	406, 396	53
Louis A. Norton	52.00	0.22 ac. @ \$100 p/ac 1 tower @ \$25 each 1 telephone pole @ \$5 each	Pt. 231	54

J. K. Woodland, Mitchell Deere, Louis Norton and Louis K. Montour also signed agreements regarding the rates for the calculation of payment which they would be willing to accept. The rates agreed to were in accordance with the sums which they and other locatees received. [Documents Nos. 20-23 inclusive.]

19. A. F. MacKenzie, Acting Assistant Deputy and Secretary, Indian Affairs, expressed satisfaction with these agreements in a letter to C. S. Bagg, General Manager of Cedars Rapids Manufacturing & Power Co., on March 27, 1930.

I have to advise you that the Department approves of the terms of settlement outlined in your letter of the 25th instant and acknowledges the receipt of the acceptances from the 25 Indian property holders over which your right of way passes. The value of the accepted parcels as given amounts to \$14,796.50. The value of the 7 parcels not yet approved by the holders amounts to \$4237.75, making a total of \$19,034.25. Five per cent of this sum for band funds amounts to \$951.71, making a total of \$19,985.96. The total amount deposited by your Company was \$29,230.00; the balance returnable will therefore be \$9,244.04. The several amounts of compensation arrived at are approved by the Department. Kindly notify the Department as to whether you find that the computations given are correct.

¹⁸ F. McDonald Jacobs signed agreement.

¹⁹ F. McDonald Jacobs signed agreement.

²⁰ F. McDonald Jacobs signed agreement.

²¹ Following information in connection with dispute given: Lot 246-De La Ronde & Woodland-.44 acres; Lot 247-De La Ronde & Woodland-.92 acres; Lot 254-De La Ronde & Woodland-1.80 acres; Lots 255, 256, 259-Woodland & La Hache-.81 acres. Louis O'Sullivan, Engineer, Cedars Rapids Mfg., forwarded agreement on March 26, 1930, with comment: "I assume that your Department will determine the rightful owner and obtain his signature." [Document No. 49.] Agreement not signed.

You are requested to forward for record in the Department one plan on tracing linen and one blueprint of your final plan as soon as they can be prepared; when these have been received the Department will request the permission of His Excellency the Governor General in Council to grant your Company the right to construct, operate and maintain your power and telephone line on the right of way indicated on the final plan. Should it be necessary to commence construction before this permission is obtained, your Company may enter for this purpose.

[Document No. 51]

20. Four agreements remained unsigned by the end of March 1930. These were with Sak Atrenho \$717.00, Lawrence Canadian (estate Deerfoot) \$753.75; William LeClair \$96.25; Louis Snow \$310.00 and \$722.50. In a letter dated April 4, 1930, Indian Agent Letourneau reported that "Louis Snow has refused to accept the proposed arrangement and after I have well represented to him that he was liable to have less if he intends to go to arbitration, he persisted in his idea." Also, Sak Atrenho wanted to have a plan of the proposed line before he would sign the agreement. Lawrence Canadian was absent from the reserve. [Document No. 57.]
21. A finalized plan of the right-of-way was forwarded by Cedars Rapids Manufacturing & Power Co. to Indian Affairs on April 5, 1930. [Document No. 58.] [See Plan No. 1 (CLSR M2364).]
22. On April 15, 1930, N. Desjardins, Secretary, Department of Public Works, wrote to the Secretary, Department of Indian Affairs, stating that they had received an application from Cedars Rapids Mfg. to run two transmission lines across the St. Lawrence River. The point of crossing was on Lot 261, Caughnawaga I.R. Desjardins asked for information. [Document No. 59.] Indian Affairs replied that the Department had received payment for the erection, operation and maintenance of the transmission line over the reserve, including Lot 261, and intended to grant the permission required by the Company. [Document No. 62.]
23. At the end of April, William Leclair signed an agreement to allow a right-of-way through Lot 370. The compensation involved was \$96.25, broken down as: 0.73 acres at \$100 per acre (\$73), 0.73 acres underbrush at \$25 per acre (\$18.25), 1 telephone pole at \$5. [Document No. 61.]
24. On May 6, 1930, D. Robertson, Chief Surveyor, Department of Indian Affairs, wrote a memo to the Departmental Secretary stating that an Order-in-Council authorizing the grant of a right of occupation to the power company was required:

An Order in Council is required authorizing this Department to grant a right of occupation to the Cedar Rapids Manufacturing and Power Company on a strip of land in the Caughnawaga Indian reserve, as shown on plan of the right of way of the said Company, made by Louis O'Sullivan, Q.L.S., which plan is of record in this Department under number M.2364.

The said right of way has a width of 192 ft from the western boundary of the Indian reserve to the towers on Lot 259 and thence 240 ft wide to the St. Lawrence River.

The Company is to have the right to construct, operate and maintain the power line or lines on the said right of way but is not to fence the line nor to prevent the use of the land for agricultural purposes. The Company has paid

for the privilege in full, in accordance with a valuation made by an officer of this Department.

[Document No. 63]

25. A. S. Williams, Assistant Deputy and Secretary of the Department of Indian Affairs, wrote Caughnawaga locatee Sak Atrenho, also known as C. W. Cloud, on May 21, 1930, advising:

... that the Department has accepted the sum of \$717.00 from the Cedars Rapids Manufacturing and Power Company on your behalf, for the privilege of that Company erecting and maintaining a power line on your property at Caughnawaga. In your absence this valuation was placed on this land by an officer of the Department. It has been approved by the Department and paid by the Company and is now in the Department awaiting your application to have the same forwarded. ...

[Document No. 64]

26. Sak Atrenho replied on May 25, 1930, that he considered the compensation offer of \$717.75 (Lots 259A, 261, 261A) inadequate. He explained:

... I am frank in telling you that I feel very badly about the matter and I feel that some high upper hand was taking my home away from me, and when I stated that I would possibly take \$1150.00 it was not that I wanted to do so. The flat value of the land may have been covered by this sum but the future development of my property would be damaged completely. ...

[Document No. 66]

27. Indian Affairs' reply to Sak Atrenho, via A. F. MacKenzie, was that the amount of \$717.75 had been accepted on his behalf by the Department and would be forwarded to him if he applied for it. MacKenzie closed his letter with this statement:

... I may say that this valuation is considered very liberal, as the tower which is to be constructed on the bank of the St. Lawrence River is very high and the wires will be of sufficient height not to interfere with your cultivation of the land.

[Document No. 71]

28. On May 21, 1930, A. S. Williams, Assistant Deputy and Secretary of the Department of Indian Affairs, notified Adrien Beaudry, President of the Québec Public Service Commission, that Cedars Rapids Manufacturing & Power Co. had "paid the compensation demanded by this Department for the privilege of erecting and maintaining its power line in the Caughnawaga Indian reserve." [Document No. 65.]

29. At the same time, Indian Affairs had been notified by an attorney representing Louis Snow that the compensation offer of \$1,030 was considered inadequate by his client (re Lots 237, 238, 239 and Pt. 418). He contended that the area of land involved had been miscalculated and that the value of standing timber was higher than accounted for. Snow wanted operations to be stopped until an agreement was made. He also wanted a copy of the valuation of his land and the offer made by the power company. [Document No. 67.] Indian Affairs responded two days later, supplying a breakdown of the compensation offer made by Cedars Rapids Manufacturing and Power Co. A. F. MacKenzie stated that the company had been given permission to proceed with construction and Indian Affairs did not intend to

interfere. Furthermore, he stated: "As you will no doubt realize the Department can permit expropriation and the agreement of the Indian holder to the above valuation is not necessary." [Document No. 69.] On June 5, 1930, the Department warned Louis Snow not to interfere with the Company in any way. [Document No. 70.]

30. At the end of May an Order-in-Council (P.C. 1141) was passed authorizing a right of occupation to Cedars Rapids Manufacturing & Power Co., to a strip of land shown on Plan M2364, to construct and maintain power lines in Caughnawaga. The text of the privy council's order, made May 29, 1930, reads:

The Committee of the Privy Council have had before them a report, dated 16th May, 1930, from the Superintendent General of Indian Affairs, submitting:

That the Cedars Rapids Manufacturing and Power Company has applied to the Department of Indian Affairs for a right of occupation on a strip of land in the Caughnawaga Indian Reserve, in the Province of Quebec, as shown on plan of the right of way of the said company, made by Louis O'Sullivan, Quebec Land Surveyor, which plan is of record in the Department of Indian Affairs under number M.2364.

That the said right of way has a width of 192 feet from the western boundary of the Indian Reserve to the towers on Lot 259 and thence 240 feet wide to the St. Lawrence River.

That the said company has paid for the privilege in full, in accordance with a valuation paid by an officer of the department.

That the said company is to have the right to construct, operate and maintain the power line or lines on the right of way but is not to fence the line nor to prevent the use of the land for agricultural purposes.

The Committee, on the recommendation of the Superintendent General of Indian Affairs, advise that the said right of occupation be granted to the said Cedars Rapids Manufacturing and Power Company, pursuant to the provisions of section 48 of the Indian Act on the conditions aforesaid.

[Document No. 68]

Section 48 of The Indian Act is cited in Appendix A at the end of this report.

31. An agreement was signed by Mrs. Lawrence Canadian accepting \$753.75 in connection with the servitude over Lot 397 (Deerfoot Estate); the agreement was forwarded to Indian Affairs on June 7, 1930. The compensation was broken down as follows: 5.58 acres at \$100 per acre (\$558), 3.63 acres underbrush at \$25 per acre (\$90.75), 3 towers at \$25 each (\$75), and 6 telephone poles at \$5 each. [Document No. 73.]
32. Soon thereafter, on June 14th, Sak Atrenho signed an agreement. Sak Atrenho's agreement (in connection with Lots 259A, 261, 261A) was different from the other agreements in that the width of the easement over his property was 240 feet, extending 120 feet on either side of a central line (others were 192 feet wide, extending 96 feet on either side of central line). No breakdown of the compensation figure of \$717.75 was located on the file containing the agreement. [Document No. 74.]
33. Louis Snow also signed agreements at the end of June 1930. One, for Lot 418, agreed to accept \$722.50, broken down as 0.94 acres at \$100 per acre (\$94), 0.94 acres underbrush at

\$25 per acre (\$23.50), 1 telephone pole at \$5, and \$600 valuable timber. The other agreement accepted \$310 for part of Lot 237, Lot 238 and part of Lot 239, broken down as 2.4 acres at \$100 per acre (\$240), 2.4 acres underbrush at \$25 per acre (\$60) and \$10 for two telephone poles. [Documents Nos. 75 and 76.]

34. At the end of June, the legal firm Crankshaw, Crankshaw and Gaboury, which Louis Snow had consulted, wrote to the Indian Affairs Department asking to be advised of whether the Cedars Rapids Manufacturing & Power Co. had powers of expropriation. A. F. MacKenzie, Acting Assistant Deputy and Secretary, responded on June 30, 1930, as follows:

... the Cedar Rapids Manufacturing and Power Company has the right of expropriation by virtue of the following Dominion Acts, - 4 Edward VII, Chap. 65; 8-9 Edward VII, Chap. 71.

Pursuant to the Provisions of Section 48 of the Indian Act the Governor General in Council by Order in Council P.C. 1141 granted the right of occupation to the Cedar Rapids Manufacturing and Power Company for the purpose of the construction, operation and maintenance of their power line or lines over a right of way through the Caughnawaga Indian reserve ...

[Document No. 77]

35. The Caughnawaga Band Council passed a resolution in August of 1930 that the Department of Indian Affairs be asked to advise as to the sum paid by the Cedars Rapids Manufacturing & Power Co. [Document No. 78.] Indian Affairs replied that \$19,985.96 had been paid by the company "for the privileges accorded them on the reserve". [Document No. 79.] This sum included the amounts paid to the individual locatees and the 5% for band interest.
36. A plan dating from December 22, 1934 (Drawing No. 4-4), shows Cedars Rapids' transmission line from Lot No. 53 in the Parish of Joachim, County of Chateaugay, to Lot No. 212 in the Caughnawaga I.R. The names of locatees and proprietors and the prices paid for the servitude are listed on the plan. [Plan No. 2.]
37. In June of 1935, Michel La Hache signed an agreement to accept \$94.70 in connection with the Cedars Rapids Manufacturing & Power Co.'s right-of-way across his Lots 256 and 259. No breakdown of the sum was given. (La Hache had also signed an agreement in March of 1930 for \$325--see above.) [Document No. 81.] A December 1946 memo by C. H. Taggart, Commissioner, Indian Affairs, indicates that the parcel for which LaHache signed the agreement comprised 0.18 acres (said memo also listed Louis Dailleboust's name beside La Hache's). [Document No. 94.]
38. In early May of 1946, R. W. Farmer, Transmission Engineer for the Québec Hydro-Electric Commission, wrote to the Indian Affairs Branch of the Department of Mines and Resources stating that they were the successors of the Cedars Rapids Manufacturing & Power Co., who had obtained a "perpetual servitude" over Caughnawaga lands by Order-in-Council P.C. 1141. Farmer indicated that the Commission intended to begin construction of the second transmission line which they had planned to build when they obtained said servitude. However, they were proposing to change the location where the second line would cross the St. Lawrence to a spot near the Mercier Bridge. [Document No. 84.] After some discussion with Indian Affairs, the Commission altered their plans, deciding to build the second line within the existing right-of-way, clearing it to its full width of 192 feet. [Refer to Documents

Nos. 85-93, 95-98.] The new line was placed in service by March of 1948. [Document No. 99.]

RIGHT-OF-WAY FOR THE EXTENSION OF THE 120KV TRANSMISSION LINE, 1948-1952

39. R. W. Farmer wrote again to the Indian Affairs Branch on November 25, 1948, with the news that Hydro-Québec wanted to construct another transmission line over Caughnawaga lands:

Hydro-Quebec are undertaking the construction of another double circuit 110 kv crossing over the St. Lawrence River, approximately 1,700 feet East of an existing crossing which was built in 1930.

To connect our lines from Beauharnois to this crossing, it will be necessary for us to obtain servitude rights over a right-of-way, 100 feet in width, through the Kanawake Indian Reserve at the location as shown coloured red and lettered A-B-C on our drawing #S-10168, two (2) copies of which are enclosed herewith.

We are ready to start negotiations towards obtaining a servitude over this strip from the various proprietors concerned, and we were proposing to follow the method used in the past, namely, to contact Mr. Brisebois, Indian Agent in Caughnawaga and the Indian proprietors concerned to try to obtain options in connection with this right-of-way.

On this right-of-way it is our intention to erect a double circuit steel line similar to the existing 1st line built in 1930.

However, before proceeding in this manner, I would like to hear from you as to whether this is satisfactory to the Department of Indian Affairs or if not, what procedure would be suggested.

[Document No. 100]

40. D. J. Allan, Superintendent, Reserves and Trusts, Indian Affairs Branch, replied to Farmer on the 7th of December, 1948:

Your letter of November 25th was received and it will be satisfactory to us if you will contact Mr. Brisebois to proceed to obtain settlements with the individual owners and also with the Indian Band Council for the right to cross the roadway. The right of way which you require can be made available to you under Section 48 of the Indian Act which provides for such a contract with a local authority having power to expropriate lands outside the Reserve. It is expected that you have such authority, and will you please give us a reference to the statute giving you such authority.

Over some of the lots there is already a right of way given to the Cedar Rapids Manufacturing and Power Company. Have you acquired that right of way? We are sending Mr. Brisebois one of the copies of your Plan S-010168 so that he may check ownership of the lots.

[Document No. 101]

41. Instructions were issued to Caughnawaga Indian Agent Brisebois by Allan the same day.

Herewith copy of our letter to the Hydro Commission and copy of their plan referred to. A reference to Mr. Taggart's report shows difference in title in the following parcels ... [Lot 256, Lot 255 and 246, Lot 238] ...

When titles are settled, the Hydro will require a separate agreement with each owner and also a Band Council Resolution should be obtained authorizing the crossing of Laprairie Road and the farm roads which the right of way would cross. Each agreement and the resolution should fix the amount of compensation payable in each case.

[Document No. 102]

2. On January 14, 1949, R. W. MacGregor, Joint Secretary, Québec Hydro-Electric Commission, replied to D. J. Allan's request to be advised of the commission's powers of expropriation: "I would advise that this Commission's powers of expropriation are set out in Section 33 of Chapter 98A of the Revised Statutes of Quebec, 1941." [Document No. 103.] A few days later, Farmer advised Allan that they had been in contact with Indian Agent Brisebois and were proceeding to obtain settlements with the individual Indian property owners affected by the proposed right-of-way. He further noted that the commission was the legal successor to the Cedars Rapids Manufacturing and Power Company and "any rights they may have had on the lands referred to are invested in the Hydro Electric Commission." [Document No. 104.]
43. D. J. Allan asked Departmental Solicitor W. M. Cory on January 19, 1949, to advise whether the right-of-way could be made available to the Hydro Commission under Sec. 48 of the Indian Act. Cory replied that all telephone and electricity companies had the power to expropriate, "see chapters 299 and 298 RS Quebec 1941." [Document No. 105.]
44. J. M. Somerville, Secretary, Department of Public Works, Canada, told the Director of the Indian Affairs Branch that Public Works had received an application under the Navigable Waters Protection Act for approval of the plan and site of the Hydro Commission's proposed transmission line, which would cross the St. Lawrence River. Somerville asked if Indian Affairs had any comments to make on the matter, particularly regarding proposed tower sites. [Document No. 106.] Director MacKay replied that they had notified the commission that the right-of-way would be made available to them under Sec. 48 of the Indian Act. [Document No. 107.]
45. R. W. Farmer, Transmission Engineer, Engineering Design Division, Québec Hydro-Electric Commission, notified D. J. Allan that settlements had been arrived at with all of the Caughnawaga proprietors to be affected by the projected right-of-way except for one by the name of Louis Dailleboust:

Further to my letter of January 17th last in connection with right-of-way through the Indian Reserve, we have been able to arrive at a settlement with all of the proprietors concerned with the exception of Mr. Louis Dailleboust who is the owner of lots #258, 259, 262, 263 and 266.

The portion of the right-of-way for which agreements have been reached with the owners is shown in pink on the attached drawing #F-10342.

In the case of Mr. Dailleboust, he is willing to accept the sum of \$900.00 for the rights required over his property and this settlement would be agreeable to us. However, the difficulty lies in the fact that Mr. Dailleboust does not wish to have this money deposited with the Department of Indian Affairs in Ottawa, and apparently, would like to receive some cash immediately or in a very short time. ... [please advise as to method to follow] ...

[Document No. 112]

Allan later informed Farmer that a cheque in the amount of \$900. could be paid to the Caughnawaga Indian Agency Trust Account to Dailleboust's credit. Agent Brisebois would be advised as to when the money could be released. [Document No. 113; also Document No. 114 advising Brisebois of same.]

A. O. Gorman, writing on behalf of B. W. Waugh, Surveyor General of Canada, instructed R. W. Farmer to send Plan F.10342 on tracing linen. [Document No. 115.] [This plan was later replaced by Drawing No. R-10129, which is filed with Canada's Legal Surveys Branch as CLSR Plan F3322, being Plan No. 3 in the collection of plans submitted with this report.]

47. Farmer wrote to Harry Beauvais, whom he identified as the Mayor of the Village of Caughnawaga, on June 7, 1949, asking for the Caughnawaga Band Council's approval regarding the crossing of a road by the transmission line extension. [Document No. 116.] On June 11, 1949, Council passed a resolution to allow Hydro-Québec "to pass an overhead line across an abandoned Public Road located between Reserve lots 244 and 245 from the Montreal-New York Highway and the old Laprairie Road." [Document No. 117.]
48. On June 21, 1949, Caughnawaga Indian Agent Brisebois returned to the Hydro-Commission the cheque they had sent for the compensation to Louis Dailleboust. Brisebois advised that Dailleboust denied ever having agreed to accept the sum of \$900; he recommended that representatives be sent to work out an agreement with Dailleboust. [Document No. 118.]
49. R. W. MacGregor, Joint Secretary of Hydro-Québec, advised D. J. Allan of Dailleboust's refusal to accept the \$900 offer on June 27, 1949:

... in view of the fact that we plan starting construction of the transmission line shortly and, consequently, wish to avoid any further delay in the settlement of this matter, we are taking the liberty of sending you herewith the Agreement forms and plans, as well as the cheque for \$900. and would request that you take whatever measures you consider appropriate in the circumstances.

[Document No. 120]

50. MacGregor wrote another letter to Allan on June 27, 1949:

We are desirous of constructing a 132 KV transmission line through the Cauwanaga [sic] Indian Reserve and for this purpose we have obtained from the undermentioned Indians, whose lands are affected thereby, perpetual servitude agreements covering rights over a right-of-way 100 feet in width, to wit:

Name	Holding	Amount of Indemnity
Veronica Hemlock	267	\$250.00
Estate Angus Lahache	256	150.00
Joseph DeLaronde	246 & 255	700.00
Joseph T. Snow	238-A	<u>50.00</u>
		<u>\$1,150.00</u>

In the case of Mr. Louis Dailleboust, owner of holdings 258, 259, 262, 263 and 266, (who is the only other land owner affected), we have been unable to reach a settlement with him and we would refer you to our letter to you on June 27th, 1949, for further details.

We enclose herewith one signed copy of each agreement with accompanying plan as well as our cheque for \$1,150. to cover the aggregate amount of the indemnity payable, excluding Dailleboust. As regards rights to cross the public roadway, we are sending you herewith drawing C-10314 approved by Mr. Harry Beauvais, Chief Councillor of the Indian Band Council.

As requested in your letter of May 11, 1949, we are enclosing a drawing on linen No. R-10129 which will replace our drawing F-10342 as well as a white print of drawing No. 10129 showing, coloured in pink, the limit of the right-of-way involved.

If the foregoing meets with your approval, we hereby make formal application for an Order-in-Council granting Quebec Hydro-Electric Commission the right to construct, operate and maintain a 132 KV transmission line on and over the lands of the Caughnawaga Indian Reserve as shown on drawing R-10129 attached hereto.

As we plan starting work on this line shortly, we would like to obtain written permission to enter upon the lands in question in the event that the settlement of Dailleboust case should delay the issuance of the Order-in-Council.

[Document No. 119]

The drawing referred to in the above letter, R-10129, is Plan No. 3 (CLSR Plan F3322) in the collection of plans submitted with this report. (See also sketch plan no. 2 at the beginning of report, which is an extract and reduction of F3322.)

51. The agreement signed by Joseph De Laronde on March 3, 1949, reads:

I, the undersigned, Joseph De Laronde, proprietor of the holding known and designated as Numbers Pts 246 and 255 of Lot Number One (#1) of the Domain of the Seignior of Sault St. Louis on the Official Plan of the Caughnawaga Indian Reserve, as prepared by Mr. C. Rinfret, Q.L.S., dated March 1st, 1944,
DO HEREBY AGREE TO

Accept the sum of Seven hundred Dollars (\$700.00) from the Quebec Hydro-Electric Commission as full, final and complete payment for a perpetual servitude, exempt from all encumbrances and charges in favour of the said Commission, its representatives or assigns, over a strip of land One Hundred (100) feet in width, being Fifty (5) [sic] feet on each side of a centre line as surveyed and staked on the abovementioned property, consisting of the right to place, replace, maintain and operate a line of steel transmission towers and foundations thereof and to place thereon and over and across the said land, the wires, cables, and all other apparatus necessary or useful for a transmission line carrying electric current of high voltage or otherwise, with the right at all times to go upon the said land with vehicles or on foot for the purpose of repairing, maintaining, operating or replacing the said line and equipment. Hydro-Quebec will pay for any damage to crops or fences caused by it in the exercise of such right of passage and shall have the right to cut and trim any trees which might interfere with or endanger the operation of its lines.

The abovementioned amount includes payment for all trees cut on the said strip of land.

The approximate location of the land affected by this servitude is shown coloured in red on the attached Drawing #F-10342 signed for identification by the parties concerned.

MADE AND SIGNED at CAUGHNAWAGA, this THIRD Day of MARCH, NINETEEN HUNDRED AND FORTY-NINE.

WITNESS:
JACK H. LEECH (Sgd.)

JOSEPH DE LARONDE (Signed)
Signature
F. BRISEBOIS (Signed)
Indian Agent

[Document No. 108]

The agreements with Veronica Hemlock (Lot 267), Joseph T. Snow (Lot 238A) and the estate of Angus Lahache (Lot 256; the Indian Agent, Frs. Brisebois signed on behalf of the estate as administrator) were made on March 14, 1949. The text of each of these agreements is essentially the same as the one signed by Joseph Delaronde, except, of course, with regard to the amount of compensation to be paid and the numbers of the lots in question. Also, the

agreements with Hemlock, Snow and Lahache stated that compensation would be paid for any trees required to be cut if they were 5 inches or more in diameter. Delaronde's agreement noted that the compensation paid to him included payment for all trees cut. [See Documents Nos. 109, 110 and 111.]

There is no evidence that any deduction was made for the Band interest in the properties.

52. On September 1, 1949, D. M. MacKay, Director, Indian Affairs Branch, notified the Québec Hydro-Electric Commission that:

... permission is granted to enter Caughnawaga Indian Reserve to construct a transmission line as shown in your drawing No. F 10342.

Final permission for this right of way will, of course, be given under authority of Order in Council. Should Mr. Louis Dailleboust not accept the compensation offered, it may be necessary to provide in the Order in Council that the amount of compensation be fixed by arbitration.

[Document No. 122]

53. A technical description of the right-of-way over portions of lots 238A, 246, 255, 256, 258, 259, 262, 263, 266, 267 in Caughnawaga I.R. was prepared by the Surveyor General's office. It referred to a plan recorded under number F3322, being a copy of drawing number R-10129 of the commission. [Document No. 123; refer to Plan No. 3.]

54. Construction of the new transmission line was reported to be underway in a letter dated December 23, 1949, from R. W. MacGregor of Hydro-Québec to D. M. MacKay, Director of Indian Affairs. He stated that no agreement had yet been made with Louis Dailleboust:

... it will soon be necessary to enter upon the property of Mr. Louis Dailleboust to construct that portion of the line which will cross his property.

Our representatives report that it is useless to attempt to fix a settlement with Mr. Dailleboust and, for such purpose, we are agreeable to the indemnity being determined by arbitration.

We should therefore appreciate it if the necessary Order-in-Council could be passed so that no difficulty will arise in connection with the construction of this new line through the Indian Reserve.

[Document No. 124]

55. D. J. Allan responded to MacGregor's letter on the 8th of February, 1950. He returned the \$900 cheque intended to compensate Dailleboust which had not been accepted and advised that a draft submission to the Governor in Council was being prepared. [Document No. 125.]

56. Allan addressed a memorandum to W. M. Cory, a Departmental Legal Advisor, that same day, February 8, 1950, asking for direction on how to proceed with arbitration in connection with Louis Dailleboust.

... Agreements as to amounts of compensation have been reached with all owners except the owner of the largest parcel, Louis Dailleboust, who has refused to sign an agreement for \$900.00 compensation.

Consent of the Indian Band Council for the crossing of the road is shown in Resolution 3121 at Folio 235. A print of a plan approved by Harry Beauvais, Chief Councillor is at Folio 244.

Section 48 provides that the determination of compensation shall be governed by requirements applicable in ordinary cases and that the Minister shall in arbitration name the arbitrator on behalf of the Indians and shall act for them in the matter of settlement.

In a letter of the 27th of June, 1949, Folio 222, the Commission forwarded a cheque for \$900.00 with a request that we take appropriate measures and in their letter of the 23rd of December 1949, Folio 250, the Commission reports it is useless to attempt to reach settlement with Louis Dailleboust. They are agreeable to arbitration and request an Order-in-Council. The cheque is being returned to the Commission.

We send you our file herewith and request your assistance in drawing the submission to Council to provide for arbitration.

Permission to the Commission to enter on the Reserve for construction was given in the Director's letter of the 1st of September, 1949, Folio 242.

[Document No. 126]

57. Allan wrote this letter to the Commission on February 9, 1950, regarding the Louis Dailleboust matter:

In our letter of the 8th of February, we advised you we would prepare a submission for an Order-in-Council. Section 48 (2), the Indian Act provides that the determination of compensation shall be governed by the requirements applicable to like proceedings.

We have no acquaintance with your procedure in ordinary cases outside of Indian Reserves. Would you be good enough to advise us of the procedure applicable to lands outside an Indian Reserve so that provision may be made for similar procedure in the case of the Louis Dailleboust lands. If the procedure is set out in the statute incorporating the commission, we would be pleased if you will send us a copy with comments and instructions as you consider applicable.

[Document No. 127]

58. On March 17, 1950, Allan was supplied with the following reply from R. W. MacGregor:

Receipt is acknowledged of your letter of February 8th, returning cheque for \$900.00 in the case of Louis Dailleboust. Since all efforts to settle Dailleboust's case have failed, we are accordingly redepositing the cheque.

In connection with your letter of February 9th on the same subject, the following is a brief outline of the procedure we follow in ordinary expropriation cases:

(a) Our powers of expropriation of servitude rights are set forth in s.33, ss.2(b) of Chapter 98A of the Revised Statutes of Quebec, 1941, and amendments, which is the Act creating this Commission, and is incorporated in a consolidation of Acts affecting this Commission, copy of which is attached hereto. You will find the relevant Section on page 9 of this Consolidation;

(b) As required by Section 33 of the Act aforesaid, we are obliged to secure an Order of the Lieutenant-Governor of Quebec authorizing us to expropriate by virtue of the said Section 33 and Sections 38 and 39;

(c) Following receipt of the Lieutenant-Governor's authorization, we follow the procedure set out in Articles 1066a et seq of the Code of Civil Procedure of Lower Canada, which, briefly, is to deposit an expropriation plan in the Registry Office for the Registration Division affected, together with a certificate by an appraiser setting forth what, in his opinion, is a fair and

equitable compensation for the rights to be acquired, as well as a Certificate of the Provincial Treasurer to the effect that he holds at his disposition an amount equal to twice the indemnity offered by the Expropriating Party. Following the registration of such deposit, we have all the requisite powers to enable us to exercise the required rights, and notice to such effect is given by registered mail to the individual affected by such expropriation;

(d) The Commission's Legal Officer then formally petitions the Quebec Provincial Electricity Board to insert the case in their Rolls for hearing.

We take it that Section 48(2) of the Indian Act is intended to provide for cases of this nature and we should like to have early advice from you to the effect that the procedure outlined is satisfactory, so that we may obtain without delay the necessary Order-in-Council from Quebec to proceed accordingly.

[Document No. 128]

59. After receiving the Commission's outline of the proceedings which would need to be followed concerning the settlement of compensation for Dailleboust, Caughnawaga Indian Superintendent, F. Brisebois, was instructed:

The Hydro Commission has supplied funds for settlement with other owners. We have returned their cheque for \$900/00 for Dailleboust and have no alternative but to allow them to proceed with the line and defer the settlement of compensation according to their usual procedure before the Quebec Provincial Electricity Board.

In such proceedings, it is doubtful that Dailleboust will recover more than the \$900.00 offered by the Commission. It is even possible that he might receive less and that costs of the proceedings might be assessed against him.

We therefore suggest that you deliver to him the enclosed letter. If he should reach an agreement with the Commission, it could be made effective without delay. In the meantime, we are proceeding with the submission of the Order-in-Council to enable the Commission to proceed to have the compensation fixed by the Quebec Electricity Board should that be necessary.

[Document No. 129]

60. The letter addressed to Louis Dailleboust, also dated March 20, 1950, recommended that he make a settlement with the Commission before the institution of arbitration proceedings:

The cheque for \$900.00 tendered by the Quebec Hydro Electric Commission was not accepted by you and the cheque has been returned to the Commission.

We are recommending that authority be granted to the Commission for the right of way without fixing the amount of compensation to be paid to you for the line in Reserve lots 258, 259, 262, 263 and 266.

The Commission has powers of expropriation which, under Section 48 of the Indian Act, may be applied by Order-in-Council on Indian Reserves. We are recommending that such an Order-in-Council be approved and that the amount of compensation be paid to you be left to be determined by proceedings under the Quebec Hydro Electric Commission Act and the Civil Code. As such proceedings are usually protracted and require the production of expert evidence of value, as well as being expensive, it is recommended that you should now, before proceedings are instituted, attempt to reach a reasonable settlement with the Commission.

[Document No. 130]

A departmental memorandum to file by an official of the name F. Kehoe provides us with an update on the Dailleboust settlement situation as of the next week, March 27, 1950:

Mr. R. W. McGregor of Hydro telephoned. Their construction crew started the latter part of last week and on meeting objection from Dailleboust withdrew from the work. Their pile driving equipment will be on the site in a day or two and they wish to avoid delay as the standby cost is \$150.00 a day.

They had advised Dailleboust that they were on the property under the authority of the Director's letter of September 1st, 1949 and Dailleboust questioned the Director's authority.

I advised Mr. McGregor that actually the authority for entry without Dailleboust's consent should be by Order-in-Council, under Section 48; that a submission to Council had been made and that I expected the Order-in-Council in a day or two and that I am to wire him as soon as the Order is received. In the meantime he has an appointment with Mr. Stein, Solicitor for Dailleboust for tomorrow when he will ask Mr. Stein to accept the authority of the Director's letter.

I pointed out that Dailleboust owned the largest stretch of the line and that on a lineal foot basis, the offer of \$900 to him was not as much as the settlements with smaller owners. He said that they were prepared to make the offer to Dailleboust on the same basis as the others but that they would not go to \$3500.00 asked for by Stein. I told him that Stein has requested delay in the submission to Council but that they were advising him that the submission has already been put forward.

[Document No. 131]

62. Order-in-Council P.C. 1605 passed on the last day of March in 1950. The Governor General in Council consented to the granting of a right to the Québec Hydro-Electric Commission permission to maintain and erect a transmission line through Caughnawaga lands. It was noted that compensation had been settled with all individuals "except Louis Dailleboust":

WHEREAS the Quebec Hydro Electric Commission has applied for the right to place and maintain an electric transmission line in Caughnawaga Indian Reserve; a plan of the location of such right of way having been registered in Indian Affairs Survey Records as No. F3322;

AND WHEREAS the Director of Indian Affairs recommends that the Quebec Hydro Electric Commission be granted the right to erect and maintain the said transmission line;

AND WHEREAS the Quebec Hydro Electric Commission has settled the amounts of compensation with all of the individual Indian owners except Louis Dailleboust, the recognised owner of holdings Nos. 258, 259, 262, 263 and 266;

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Citizenship and Immigration and pursuant to the provisions of section forty-eight of the Indian Act, Revised Statutes of Canada, 1927, chapter 98, is pleased to consent and doth hereby consent to the grant to the Quebec Hydro Electric Commission of the said right of way; the compensation to be paid by the said Commission in respect of the right of way over holdings Nos. 258, 259, 262, 263 and 266 to be fixed by proceedings under the Quebec Hydro Electric Commission Act, Statutes of Quebec, 1944, Chapter 22; and under the Code of Civil Procedure of Lower Canada, Articles 1066a et seq., as such procedure would be applicable in like proceedings by the Commission with regard to lands outside an Indian Reserve.

[Document No. 133]

On the same day as this O.C. was passed an agreement was reached between Hydro-Québec and Louis Dailleboust. The agreement reads:

I, the undersigned, Louis Dailleboust proprietor of the holdings known and designated as Numbers 258, 259, 262, 263 and 266 of Lot Number One (#1) of the Domain of the Seigniorship of Sault St. Louis on the Official Plan of the Caughnawaga Indian Reserve, as prepared by Mr. C. Rinfret, Q.L.S., dated March 1st, 1944,

DO HEREBY AGREE TO

Accept the sum of ONE THOUSAND THREE HUNDRED AND FIFTY dollars (\$1,350.00) from the Quebec Hydro-Electric Commission as full, final and complete payment for:

1- A perpetual servitude, exempt from all encumbrances and charges, in favour of the said Commission, its representatives or assigns, over a strip of land One Hundred (100) feet in width, being Fifty (50) feet on each side of a center line as surveyed and staked on the abovementioned property, consisting of the right to place, replace, maintain and operate a line of steel transmission towers and the foundations thereof and to place thereon and over and across the said land, the wires, cables, and all other apparatus necessary or useful for a transmission line carrying electric current of high voltage or otherwise, with the right at all times to go upon the said land with vehicles or on foot for the purpose of repairing, maintaining, operating or replacing the said line and equipment.

2- A perpetual servitude consisting of the right to place, replace, maintain and operate a lighting circuit carried on two (2) wood poles and the foundations thereof on that part of holding #266 lying North of the Highway and to place thereon and over and across the said part of holding #266 the wires, cables and all other apparatus necessary or useful for a lighting circuit.

3- A perpetual servitude consisting of the right to construct and maintain a permanent roadway, approximately Twenty (20) feet in width on said portion of holding #266 lying North of the existing Highway with the right at all times to go on the said roadway for the purpose of repairs and maintenance.

4- The right to use a temporary right of way for the period of the construction only, approximately Four Hundred (400) feet in length and One Hundred (100) feet in width, being Fifty (50) feet on each side of the prolongation in a Southerly direction of the abovementioned center line.

Hydro-Quebec will pay for any damage to crops or land or fences caused by it or its representatives in the exercise of such right of passage and shall have the right to cut and trim any trees either within or adjacent to the abovementioned right of way which might interfere with or endanger the operation of its lines. All trees cut to be piled along with the branches at the sides of the right of way.

The approximate location of the land affected by the perpetual servitude is shown coloured in red on the attached drawing Tr-R-08 signed for identification by the parties concerned. The temporary right of way is shown coloured in green on the said plan.

On the signing of the present agreement, the Quebec Hydro-Electric Commission or its representatives will have the right to enter on the abovementioned property for the purpose of carrying out any or all work in connection with the various constructions mentioned above.

MADE AND SIGNED AT Montreal Que THIS 31ST DAY OF March, NINETEEN HUNDRED AND fifty.

...

[Document No. 132]

A cheque for \$1,350 was sent by the Hydro Commission to Agent Brisebois. [Document No. 134.] The compensation was released to Dailleboust in June of 1950. [Document No. 138.]

On April 25, D. J. Allan, Superintendent of Reserves and Trusts, Indian Affairs Branch, provided the Hydro Commission with a copy of O.C.P.C. 1605 and stated:

...
It is proposed that the permission for the right of way be given by the Minister under the authority of the Order-in-Council. We have drawn the enclosed form of agreement to permit the right of way. If you find it acceptable, will you please execute three copies and return them here for completion by the Department following which a completed copy will be supplied to you.

[Document No. 135]

65. A Memorandum of Agreement was entered into on June 1, 1950, between Indian Affairs and the Hydro Commission.

...
BETWEEN: His Majesty the King, represented herein by the Minister of Citizenship and Immigration, hereinafter called the "Minister".

of the first part

AND: Quebec Hydro Electric Commission of Montreal, Quebec, hereinafter called the "Commission".

of the second part.

WHEREAS the Commission has applied for the right to place and maintain an electric transmission line in Caughnawaga Indian Reserve and under the authority of Section 48 of the Indian Act²², His Excellency the Governor in Council has, by Order-in-Council, P.C. 1605, dated the 31st of March, 1950, consented to the grant of the said right-of-way.

AND WHEREAS the Commission has made settlements with individual Indians holding locations as follows:-

Veronica Hemlock	holding 267	\$250.00
Estate of Angus Lahache	" 256	150.00
Joseph DeLaronde	" 246 & 255	700.00
Joseph T. Snow	" 238A	50.00
Louis Dailleboust	" 258, 259, 262, 263, 266	1350.00
		\$2500.00

NOW THEREFORE the Minister hereby grants to the Commission permission to place, replace, maintain and operate a line of steel transmission towers and wires, cables and other apparatus for an electric transmission line on the following lands:-

Description

All those portions of lots two hundred and thirty-eight-a, two hundred and forty-six, two hundred and fifty-five, two hundred and fifty-six, two hundred and fifty-eight, two hundred and fifty-nine, two hundred and sixty-two, two hundred and sixty-three, two hundred and sixty-six, and two hundred and sixty-seven in Caughnawaga Indian Reserve number fourteen, in the Province of Quebec, required for right-of-way for transmission line of the Quebec Hydro-Electric Commission, as said right-of-way is shown bordered in red on plan of reserve number F3322 in the Indian Affairs Survey Records at Ottawa, which plan is a copy of drawing No. R-10129 of said Commission.

²² See Document No. 1 for a copy of this section. Also, the text of Sec. 48 is cited in Appendix A at the end of this report.

and the right to place, maintain and operate a lighting circuit in that part of holding No. 266 north of the highway.

And the right to construct and maintain a permanent roadway twenty feet in width on the said portion of holding No. 266 north of the highway.

To hold the same for as long as required by the Commission for the said purposes.

The Commission covenants that it will make payment to the Minister for any damage to crops or land or fences caused by it or its representatives.

It is agreed that the Commission shall have the right to cut and trim trees within or adjacent to the lands above described which might interfere or endanger the operation of its lines. The wood from all trees so cut shall be piled to the side of the right of way to be available to holders of Indian locations.

IN WITNESS WHEREOF these presents are signed by the Deputy Minister of the Department of Citizenship and Immigration on behalf of the Minister and are executed by the Commission by its proper officers.

[signed, sealed by Acting Deputy Minister of Citizenship and Immigration and the Vice-President and Joint Secretary of the Quebec Hydro-Electric Commission]

[Document No. 137]

66. On September 10, 1952, the Acting Superintendent of Reserves and Trusts, Indian Affairs, made the following statement to B. W. Waugh, the Surveyor General, with regard to the right-of-way granted to Cedars Rapids in 1930:

... Cedars Rapids Manufacturing and Power Company were granted the right to use and occupy a power line r/w as shown on plan M. 2364 by P.C. 1141 dated 29th May, 1930. This authority was granted under Section 48 of the Indian Act. No formal grant was issued.

[Document No. 141]

THE TAKING OF CAUGHNAWAGA LANDS FOR THE ST. LAWRENCE SEAWAY, THE RELOCATION OF A PORTION OF THE 120 KV LINES AND SUBSEQUENT LICENCE BETWEEN HYDRO-QUEBEC AND THE ST. LAWRENCE SEAWAY AND THE RETURN BY THE SEAWAY AUTHORITY OF SURPLUS LANDS TO RESERVE STATUS, 1955-1996

67. In September of 1955 and February and October of 1956, the Governor in Council gave authorization for the taking of over 1,350 acres of Caughnawaga land by the St. Lawrence Seaway Authority (SLSA) for the purpose of constructing a seaway canal along the south shore of the St. Lawrence River. A portion of the right-of-way for the power transmission line under consideration in this report passed through the area taken for seaway purposes. [Documents Nos. 144, 145 and 159.] Two months prior to the passage of the September 1955 Order-in-Council, the Caughnawaga Band Council passed a resolution (#171) stating that "Any land on the Reserve, which will not be used for Seaway purposes and which now contain within the expropriated area to revert back to the Band." [Document No. 142.]
68. Beginning in May of 1956, there was some discussion about the possible relocation of power lines at Caughnawaga, necessitated by the St. Lawrence Seaway canal construction. The lots which would reportedly be affected by the new right-of-way were 222, 223A, 231, 257²³, 325, 327, 328, 338, 341, and 344. [Documents Nos. 146, 147, 148 and 149.] In a June 4, 1956 letter to R. W. Farmer, Transmission Engineer, Québec Hydro-Electric Commission, the Superintendent, Reserves and Trusts, Indian Affairs Branch, stated that the completion of the right-of-way for the Commission was to stand until the effect of the construction of the Seaway was determined. The construction would necessitate the relocation of a power line within and outside of the area expropriated by the Seaway and a new legal plan of survey of the line on the reserve would therefore be required. Superintendent Bethune noted that he understood that the agreement between the Commission and the SLSA was that the latter would pay the costs of relocating the power line, including the acquisition of a new right-of-way. [Document No. 150.] This was confirmed. [Document No. 152]. Bethune asked the Surveyor General to issue survey instructions in a letter dated June 4, 1956. [Document No. 151.]

On August 14, 1956, D. Stevens, Administrative Officer of the Seaway Authority, was asked by W. P. McIntyre of the Indian Affairs Branch whether it would be possible to keep the entire right-of-way for the relocated power line within the area that had been expropriated by the seaway. He advised that he would refer the matter to SLSA and Hydro commission engineers. [Document No. 154.]

On August 20, 1956, the Hydro Commission was authorized by the Surveyor General to have a survey made of the relocation of the proposed right-of-way. It was noted that if the right-of-way was for an easement only, an explanatory plan would be sufficient. [Document No. 156.] On September 20, 1956, the Surveyor General's office issued instructions to A. G. Murphy, Chief Engineer, SLSA, to have the survey of the right-of-way require for the relocation. [Document No. 158.]

²³ Later omitted as it was included in error.

Before the survey could be done, however, the Indian Affairs Branch was informed "that the Quebec Hydro transmission line will be located entirely within the area of the Reserve already expropriated." [Document No. 161.]

Sketch plans nos. 3 and 4 at the beginning of this report illustrate the location of the two 120 kv lines following the construction of the seaway. See also Plan No. 10 (Drawing No. 4-3) in the collection of plans submitted with this report.

69. W. J. Brennan, A/Chief, Agencies Division, Indian Affairs, wrote a memo to the Chief, Economic Development Division, in April of 1964 concerning the Seaway Authority's plans to turn over lands to Indian Affairs that were no longer required by the SLSA. Certain operating devices, including a sewage treatment plant, power lines and so forth were located on the lands to be turned over. [Document No. 164.] A meeting was held in May of 1965 at which representatives of the SLSA, the Caughnawaga Council, and Indian Affairs were present. One of the items on their agenda was the return of lands to Caughnawaga. With regard to land on the north side of the navigation canal:

...
The Authority stated it could not agree to return this land. There is a commitment to the Province of Quebec with respect to a future power development of the Lachine Rapids which will flood land on the north side of the canal. Further, the cost of providing access would be prohibitive. The Indians feel this land should come back to them and cannot understand how the Authority can turn the land over to the Province of Quebec.²⁴ The ultimate disposition of this land will be the subject of further discussion.
...

[Document No. 165]

This commitment between SLSA and Hydro-Québec was discussed further in a memo dated June 24, 1965, from IAB's administrator of lands, W. P. McIntyre, to the Departmental Legal Adviser.

Expropriation of Caughnawaga Reserve land by the St. Lawrence Seaway Authority pursuant to Section 35 of the Indian Act was consented to by the Governor General in Council by Order in Council P.C. 1955-1416 dated September 16, 1955. ...

In discussions with the Caughnawaga Indians, the President of the Authority gave undertakings that on completion of construction of the navigation canal land not needed for the operation of the canal would be returned to the Band.
...

The Caughnawaga Band Council has been discussing return of land with the Seaway Authority and agreement has been reached that certain lands on the south side of the navigation canal will be returned. However, there is a large area of land on the north side of the canal which the Authority says cannot be returned to the Band because of the Authority's commitment to the Province of Quebec. It is expected that Quebec Hydro will, in the not distant future, undertake a hydro-electric power development in the Lachine Rapids. This development will flood the land on the north side of the canal in whole or in part. The Authority has made a commitment to Quebec in respect of this land insofar as it will be affected by the proposed power development.

The Indians take the position that the Authority was empowered to expropriate for Seaway purposes only and therefore does not have the right

²⁴ It should be noted here that, by this time, the SLSA had given Hydro-Québec a licence to occupy the lands on which the two 120 kv lines under consideration in this report had been relocated, effective April 1959 (licence given April 1962). This will be discussed below in this report.

to turn over land on the north side of the canal to the Province [emphasis added].

For the information of the Indians and ourselves, your opinion would be appreciated as to whether the Authority would be exceeding its powers by granting the former reserve land to the Province.

Negotiations are underway with the Authority with a view to reaching a final settlement between the Band and the Authority. An early opinion on the matter raised in this memorandum would be helpful in furthering the negotiations.

[Document No. 166]

The reply to the above memo was not found.²⁵

70. In September of 1966, Order-in-Council P.C. 1966-1824 authorized the transfer of 10,968,901 square feet (just under 252 acres) of expropriated Caughnawaga lands back to the Minister of Citizenship and Immigration, Indian Affairs Branch (comprised of SLS lots 1, 2 and 3). [Document No. 167.] Another 553.193 acres comprised of SLS lots 4 to 26 inclusive were transferred to Indian Affairs in October 1976 by O.C.P.C. 1976-2662. [Document No. 178.] The lands transferred by the 1966 and 1976 Orders-in-Council were set apart in 1978 as part of Caughnawaga I.R. No. 14 under authority of O.C.P.C. 1978-3105. [Document No. 193.] (Sketch plans nos. 3, 5 and 6 at the beginning of this report show the location of the abovementioned SLS lots.)

The October 1976 and October 1978 Orders-in-Council defined the lands being transferred to reserve status by their SLS Lot numbers. Examination of the plans showing the returned property would appear to indicate that most of the expropriated lands over which the two 120 kv lines originally traversed, before relocation, were returned to reserve status with no encumbrances of any kind. Examination of these CLSR plans also indicates that the lands that were affected by the relocation of the 120 kv lines were *not* returned to reserve status. [See CLSR Plans Nos. 58645, 58619, 58643, 58758, being Plans Nos. 5, 6, 7 and 8 in the collection of plans submitted with this report.]

71. In fact, in April of 1962, the SLSA gave Hydro-Québec a licence to erect, maintain and operate the two 120 kv lines supported on 20 towers (Licence No. 63-51, formerly No. 61-103), effective from April 15, 1959. Specifically, Hydro-Québec was given permission to:

... erect, maintain and operate the two (2) 120 KV. electric transmission lines (hereinafter referred to as "the said transmission lines") on, over and across land expropriated for the construction of the St. Lawrence Seaway in the Indian Reserve of Caughnawaga; the first transmission line consisting of nine (9) steel towers with the necessary wires strung thereto, beginning with tower "A" on lot No. 261 of the Indian Reserve of Caughnawaga; thence southerly over and across the South Shore Canal to tower "B" on lot No. 257; thence southerly to tower "C" and westerly to towers "D, E, F, G, H and I" with tower "I" on lot 231; the second transmission line consisting of eleven (11) towers, with tower "J" on lot 267; thence southerly across the South Shore Canal to tower "K" on lot 273; thence southerly to tower "L" and westerly to towers "M, N, O, P, Q, R, S, T", with tower "T" on lot 231, the location of the towers included in the said transmission lines being indicated by red squares on the Licencee's plan No. TR-R-414 hereto annexed [not annexed to copy of licence supplied].

...

[Document No. 162]

²⁵ It may be on Department of Indian Affairs' file 373/34-1-1, Vol. 12, but was removed when the file was screened.

The area covered by the licence included part of the original area expropriated in 1930 (see CLSR Plan 58645). The amount of the annual rental has been increased on several occasions since the licence was first granted. [Documents Nos. 163, 175, 186, 195, 196, 197, 198.] Appendix C at the end of this report gives a breakdown of the annual rentals paid since the licence was granted. The area covered by the licence is 40.37 arpents² (equal to about 31.3 acres). [Document No. 200, Annex I.] (Plans Nos. 9 and 11 show the location of the lines under this licence.)

It is stated on the cover sheet of Licence 63-51 that the "date of authorizing Order in Council" was "July 21, 1955." The only Order-in-Council extant of this date concerning the St. Lawrence Seaway Authority (O.C.P.C. 1955-1090) pertains to the Minister of Finance making loans to the SLSA. [See Document No. 143.]

Correspondence written by officials of the Indian Affairs Branch indicates that they were under the impression that the lands shown as being under servitude to Hydro-Québec by the SLSA were to be returned to reserve status. The available documentation related to this matter is difficult to follow and understand. This confusion can be attributed to the fact that there were other power transmission lines on the lands which were expropriated for the seaway, one of which is known to have been constructed after the expropriation took place. This 315 kv line, known as Line 1, is the subject of another report. In order to understand the following portion of this report, the reader may find it necessary to consult the report on Line 1. The reader may also find it helpful to refer to the sketch plans at the beginning of this report for clarification about the location of the servitudes and SLS lots which are mentioned below.

72. In 1971 and 1972, Hydro-Québec and the Caughnawaga Band Council negotiated a permit for the erection of a 315 kv transmission line (called Line 1) situated on lands which had been expropriated by the Seaway Authority but intended for return to reserve status. This 315 kv line runs along the south side of the navigation canal, then crosses over to the north side of the canal and then over the St. Lawrence. The point of crossing is located just to the west of the westernmost 120 kv. transmission line comprising part of Line 2 which has been under consideration in the present report. [Document No. 168.]²⁶ [See sketch plan no. 6 at the beginning of this report; also Plans Nos. 9 and 11 in plan collection.] This draft agreement was executed by Hydro and the Band Council, then forwarded to the Minister of Indian Affairs for approval and signing. However, because the lands were not yet under the control of the Department, approval was not given. [Document No. 170.]

Contemporaneously, instructions were being issued by the Surveyor General's office to C. L. Mercier, Surveyor, to survey SLS lots 7 to 15, which were to be transferred from the SLSA's control to the Department of Indian Affairs. The sketch plan forwarded to Mercier along with his instructions showed the two relocated 120 kv lines outlined in red (Line 2);

²⁶ In December of 1972, SLSA gave Hydro-Québec a Licence (#63-47) for a portion of this 315 kv line which lay on lands which the SLSA did not evidently intend to reconvey to Indian Affairs. In fact, part of the line and its support towers lay within the SLSA's minimum 100' allowance. This licence is still in effect.

Mercier was specifically told that he was to survey the power line rights-of-way outlined in red on said sketch plan. [Document No. 169; refer also to Plan No. 4.]

In October of 1972, the Assistant Deputy Minister of Indian Affairs gave his approval to the "transaction anticipated by" the May 1972 agreement (Line 1). [Document No. 171.]

73. On November 17, 1972, it was reported to the Land Transactions Section of Indian Affairs that the survey work being carried out by Mercier in connection with the "Quebec Hydro Right-of-Way" was complete but the plan was not yet ready. [Document No. 174.] On May 28, 1973, the Surveyor General, D. R. Slessor, issued supplementary instructions to C. L. Mercier for the survey of SLS lots 18 to 25. [Document No. 176.]
74. As was noted earlier in this report, Order-in-Council P.C. 1976-2662 authorized the transfer of 553.193 acres of land to the Minister of Indian Affairs and Northern Development from the Minister of Transport on October 28, 1976. Involved in the transfer, as per an attached schedule, were SLS lots 4 to 26 inclusive.

The Order-in-Council stipulated that the St. Lawrence Seaway Authority was reserving "the right and privilege to erect, maintain and use a power line on, over and across the lot designated as SLS 4, according to CLSR plan no. 55149." Examination of this plan shows a transmission line right-of-way of 25 ft. in width crossing SLS 4 and identified as belonging to Hydro-Québec (the location of SLS 4 is shown on sketch plan # 5 at the beginning of this report). This line on SLS 4 is *not* related to the transmission line under consideration in the present report. [Document No. 178.]

75. James O'Reilly, legal counsel for the Caughnawaga Band, inquired to G. A. Poupore, Director of the Lands and Membership Branch of Indian Affairs on August 23, 1977, as to whether the servitude to Hydro-Québec referred to in O.C.P.C. 1976-2662 had been registered so that the 804 acres conveyed to the Minister of Indian Affairs by that O.C. as well as the 1966 O.C. could be confirmed as Caughnawaga reserve lands. [Document No. 179.]
76. On September 30, 1977, G. A. Poupore, Director, Lands and Membership, wrote to the Assistant Director of Lands, Indian and Eskimo Affairs, Québec Region, stating that a memo dated 17 November 1972 had advised that the survey of the right-of-way for Hydro-Québec was soon to be completed. If done, Poupore asked that the plan be forwarded so that the servitude could be registered. [Document No. 180.]

On October 5, 1977, G. A. Poupore informed James O'Reilly that the survey of the servitude was completed but they had not yet received a copy of the plan. Thus, the servitude had not been registered. Poupore advised that his officers were following the matter up.²⁷ [Document No. 181.] However, on October 18, 1977, Jean-Guy Charest, Regional Lands Advisor, notified Poupore that: "after investigation, we found no other survey request than

²⁷ It would appear that there was some confusion about this. The right-of-way referred to in the November 17, 1972 memo was not connected in any way to the servitude for a transmission line reserved to the Seaway on SLS 4 by O.C.P.C. 1976-2662. The confusion may have started with Poupore, who may have assumed that the servitude referred to in O.C.P.C. 1976-2662 was the same transaction as the right-of-way (for Line 2) mentioned in the November 17, 1972 memo.

the attached Survey Instructions A-72, dated June 7, 1972, and no other survey plan of the above mentioned right-of-way than the numbers M 2364, 58619, 58643 and 58645 C.L.S.R." [Document No. 182.]

77. A memo was written to H. J. Ryan, Lands and Membership, Indian Affairs, perhaps by G. A. Poupore, on November 28, 1977. Note the confusion over what lands were actually included in the May 1972 permit for Line 1:

It is my understanding that when the St. Lawrence Seaway Authority was returning lands which were surplus to their needs to Crown Canada, the Department would receive the Seaway Lots plus Quebec hydro rights of way and we would negotiate directly with Hydro Quebec regarding their servitude [emphasis added].

There are two Orders in Council transferring lands back to Crown Canada for the use and benefit of the Caughnawaga Band. The descriptions in the schedules attached and relevant plans do not include nor are they subject to the servitude to Hydro Quebec.

In order for our Department to negotiate with Quebec Hydro we should have control and administration of the land affected by their servitude.²⁸

The Caughnawaga Band, in 1971 negotiated with Quebec Hydro the terms and conditions for the servitude. An agreement (item 1 attached) signed by Quebec Hydro and the Band Council Representatives was submitted for execution by our Minister, and a sum of \$17,000 being the fee for two years plus \$1,000 interest was deposited to the Band Capital Fund.

Because the land over which the servitude exists was not yet part of Caughnawaga Reserve and because a legal survey was required, this agreement was not signed by our Minister. By letter dated October 30, 1972, however approval in principle was given to the transaction anticipated by this Agreement (copy item 2 attached). What we need now is:

- (a) a survey of the Hydro Servitude;
- (b) O.C. transferring the surveyed R/W from SLSA/Transport Canada to D.I.A.N.D. Crown Canada;
- (c) Enter into Agreement with Hydro pursuant to the Public Lands Grant Act, and register the servitude;
- (d) Set all the lands i.e. SLS Lots 1 to 25 and land covered by the Servitude in favour of Hydro as an addition to Caughnawaga I.R. 14.

It has been suggested by Surveys that a compiled plan could be drawn showing the Hydro Servitude based upon the available plans of the St. Lawrence Seaway lots, and may be used for legal description purposes. This alternative to (a) would be quicker and cheaper. Quebec Hydro's approval of this plan will be sought.

[Document No. 183]

78. On December 16, 1977, G. A. Poupore, Director, Lands Branch, wrote to D. R. Slessor, Surveyor General, Legal Surveys Division, Surveys and Mapping, stating that the servitude in favour of Hydro-Québec was shown on CLSR plans 58619, 58643, 58645, 58758 [see Plans Nos. 5, 6, 7 and 8] and that the survey instructions for those plans were made on July 6, 1972 and May 28, 1973. Poupore stated:

²⁸ The statements made in the first three paragraphs of this memo clearly indicate that the author has no knowledge of the fact that the servitudes to Hydro-Québec shown on the plans referred to in the schedule to the Orders-in-Council were already under licence 63-51 to Hydro-Québec from the St. Lawrence Seaway Authority. Also, the servitude between SLS lots 22 and 23 shown on CLSR Plan 58758 was also under licence from SLSA to Hydro-Québec (#63-47), being the lands occupied by the 315 kv line and one tower (Line 1). Said licence 63-47 is discussed in the report on Line 1.

...
Our Department is negotiating with the Saint Lawrence Seaway Authority the transfer of management and control of the lands encumbered by the Hydro-Quebec servitude and when this transfer is accomplished will enter into a right-of-way agreement with Hydro-Quebec.

For these two purposes we require a description of the Hydro rights-of-way utilizing the existing plans of survey of the St. Lawrence Seaway lots for (a) an Order in Council and (b) a Right-of-Way Agreement.

[Document No. 185]

79. In accordance with the instructions from Poupore, a description of the servitude in favour of Hydro-Québec was prepared on January 9, 1978:

In the Province of Quebec
in the County of Laprairie
in Caughnawaga Indian Reserve No. 14;
that part of a servitude in favor of Hydro-Quebec
adjacent to Lots S.L.S. 8 to 13 inclusive and Lots S.L.S. 22 to 25 inclusive as
shown on plans recorded under numbers 58619, 58643, 58645 and 58758 in
the Canada Lands Surveys Records,
said servitude having an area of 35 acres more or less.²⁹

[Document No. 187]

The description was sent to Poupore the same day.

80. On January 26, 1978, Glenda O'Reilly, presumably of the Lands Branch, Indian Affairs, wrote a memo stating that the transfer of the hydro right-of-way had not yet taken place. The course of action decided on was to ask the SLSA to transfer the administration and control of the lands in which the servitude was included to Indian Affairs so that the easement could be made to Hydro-Québec.

I spoke with Mr. Menard [Land Transaction Section of Indian Affairs] regarding the course of action we should take in order to have control of the lands over which the Quebec Hydro right-of-way is located transferred to us.

He advised me to approach the St. Lawrence Seaway Authority with the proposal. If they agree with the proposal and transfer administration and control, we will then decide whether to proceed with PLG Act [Public Lands Grants Act] or Indian Act for the easement to Hydro.

No other money except the \$17,000 credited to the Band Capital have been received by our Finance Branch from Hydro [re line 1 permit].

I am unable to get Foy Poulin re whether the Band has been receiving money directly. Will call Monday 30th for confirmation.

A note written on the memo later stated:

called Band office 6/2/78 they advise that they are receiving \$8000 per annum from Quebec-Hydro - cheque made out to Rec. General on behalf of the Iroquois of Caughnawaga

[Document No. 188]

²⁹ Again, note that the servitude between SLS 22 and 23 shown on CLSR Plan 58758 [Plan No. 8] is for a portion of the 315 kv line (Line 1) and has been under Licence 63-47 between SLSA and Hydro-Quebec since 1972. The other lands shown as being under servitude to Hydro-Quebec on CLSR Plans 58619, 58643, 58645 and 58758 are for the two 120 kv lines (Line 2) which were also under licence from SLSA to Hydro-Quebec (Licence #63-51).

On February 17, 1978, G. A. Poupore, Director of the Lands Branch, Indian Affairs, wrote to Jacques St. Laurent, Real Property Administrator, The St. Lawrence Seaway Authority, at St. Lambert, Québec. Poupore stated:

Orders in Council P.C. 1966-1824 dated September 22, 1966 and 1976-2662 dated October 28, 1976 transferred to our Department the management and control of twenty-six parcels of land containing by admeasurement 251.809 acres and 553.193 acres respectively.

We will shortly make a submission to the Governor in Council establishing these lands as an addition to the Caughnawaga Indian Reserve No. 14.

According to our records some 35 acres of land were excluded because of a proposed servitude in favour of Hydro-Québec.

I would appreciate knowing whether you have granted this servitude to Hydro-Québec and whether you are now in a position to return these lands to us.

...

[Document No. 189]

82. Within ten days, Jacques St. Laurent sent this reply to Poupore:

Further to your letter of February 17, 1978, we wish to inform you that the servitude referred to has not yet been granted by the Authority.

Presently, Hydro-Québec holds a Licence from the Authority covering the right and privilege to erect, maintain and use the transmission line on Authority land.

It may still be some time before the matter is finalized. Hydro-Québec has so far refused to sign an agreement with the Authority confirming the conditions under which the transmission line was relocated to accommodate the construction of the Seaway. The agreement provided for a servitude to Hydro-Québec. However, it appears that Hydro-Québec is satisfied with the Licence it holds from the Authority [referring to Licence No. 63-51, discussed earlier in this report].

We shall revive the matter with Hydro-Québec in an attempt to conclude the agreement and keep you informed of further developments.

[Document No. 190]

83. On October 12, 1978, Order-in-Council P.C. 1978-3105 re-established 805.002 acres, which had been transferred to the Minister of Indian Affairs by O.C.P.C. 1966-1824 and O.C.P.C. 1976-2662, as part of Caughnawaga I.R. No. 14. The lands transferred were SLS Lots 1 through 26 inclusive. It was noted that the St. Lawrence Seaway Authority reserved "the right to erect, maintain and use a power line on, over and across the said S.L.S. 4".³⁰ [Document No. 193.]

84. On November 28, 1979, F. J. Singleton, Acting Director, Lands Branch, Indian Affairs, forwarded copies of correspondence relating to the servitude for Hydro-Québec to the Regional Director General of Indian Affairs at Ste. Foy, Québec. It is evident that the Department was still confused about what lands were included in the 1972 permit between the Caughnawaga Band Council and Hydro-Québec. This confusion resulted from the loss of the plan which had accompanied the permit.

³⁰ SLS 4 is a considerable distance from the line under consideration in this report, as can be seen on the sketch map showing SLS lots at the beginning of this report.

[Rough draft translation from French:]

Servitude - Hydro Québec
Caughnawaga Reserve and the St. Lawrence Seaway

This is further to the telephone conversation of J. L. Ménard/Michel Sioui regarding the above-mentioned subject.

It is a fact that on June 27, 1972, the firm of O'Reilly, Allain, Hudon sent us an agreement document covering a right-of-way in favour of Hydro-Quebec. It appears that the said [*tracé*-tracing?] affected reserve lands as well as lands still belonging to the St. Lawrence Seaway.

On July 12, 1972, we furnished to the Secretariat of the Ministry the details connected with the affair and explained why the Minister could not countersign the document. The result was a letter of July 29, 1972, [sic - July 24, 1972] from our Assistant Deputy Minister to Mr. James O'Reilly. We are annexing a copy of these two letters as well as others that followed.

It also appears from a letter of November 17, 1972, from the Regional Office that the right-of-way had been surveyed, however, we have received a contradictory report dated October 18, 1977.

Thus, on August 23, 1977, Mr. O'Reilly wrote again on the subject of the right-of-way and our letter of September 30, 1977, followed with the result that the contradictory report above-mentioned of October 18, 1977 was made. Due to these difficulties, we have written to the St. Lawrence Seaway on February 17, 1978, to receive from them the answer of the following February 27. Copies hereto-attached. It is to be noted that nothing transpired following this letter from Mr. Jacques St-Laurent.

In conclusion, a survey plan proves necessary and this, as much for the portion on this side [*en deçà*] of the limits of the Reserve as for the portions of lands "retained" or not "re-transferred" by the St. Lawrence Seaway (35 acres approx.). At the time of the reception in 1972 of the agreement project there was a sketch which was given to the appropriate section for conservation purposes. For unknown reasons, we cannot find the said sketch.

There would be reason for you to inquire if Hydro Quebec is expecting two servitudes or only one to cover the whole right of way.

In the last case, the 35 acres would have to be returned to us and I do not believe that the Seaway envisaged such a cession.

Regarding the sketch made in 1972, today lost, there is reason to believe that there exists another copy in the files of Hydro Quebec. In the affirmative, it should be possible for your Regional Surveyor to confirm a) that the tracing does affect reserve lands and also out of reserve lands (i.e. lands retained by the Seaway) and b) that such a tracing could be the object of an official survey plan for a sole and unique servitude (once the lands are retroceded by the Seaway). This having been done, it is a matter of deciding if the draft agreement of 1972 could be submitted for signature in the name of the Minister thus avoiding the necessity of having to prepare a new agreement.

We would appreciate being kept informed of the success of your proceedings.

[Document No. 194]

85. On October 24, 1996, Sophie Yale, Notary, Civil Litigation and Real Property Law (Québec) Section, INAC, wrote a legal opinion concerning the status of the line under consideration in this report, referred to as Line 2, as well as an additional transmission line at Kahnawake

(Line 4). The memo was addressed to Yves Cazalais, Legal Advisor, INAC, Québec. The following is a translation of Yale's memo.³¹

This is in response to the correspondence exchanged on the aforementioned matter. The Department of Indian Affairs and Northern Development Canada would like to know the rights held by Hydro-Québec³² on the Kahnawake Indian reserve, more specifically regarding transmission lines 2 and 4.

To this end, we have begun studying documents provided to us and examining the titles to the Kahnawake reserve, known and designated as lot 1, land register of the Domaine de la seigneurie de Sault St-Louis. Martine Valiquette, our office's notary, went to the registry office in the registration division of Laprairie on October 3 and 4, 1996 to do the necessary research.

Line 2

1- The purpose of the order-in-council P.C. 1141 of May 29, 1930 was to grant to Cedars Rapids Manufacturing and Power Company the right of way to build, operate and maintain a power transmission line. The Privy Council "advise that the said right of occupation be granted to the said Cedars Rapids Manufacturing and Power Company, pursuant to the provisions of section 48 of the Indian Act."

Section 48 of the Indian Act stipulated at that time that:

"No part of a reserve can be expropriated for the needs of a railway, road, public work or work intended for some public use without the consent of the governor in council, but any company or municipal or local authority which has the power, conferred upon it by law, be it federal or provincial, to expropriate or use lands or some interest in the lands, without the consent of the governor in council as aforesaid and subject to the terms and conditions imposed by this consent, exercise the power conferred upon it by law with respect to any reserve or a part thereof."

The Federal Parliament does not, by this provision, confer any power of expropriation; it only permits powers of expropriation validly granted elsewhere to hold sway with respect to Indian lands under its exclusive legislative jurisdiction.³³

Therefore, the Cedars Rapids Manufacturing and Power Company had to obtain the authorization of the governor in council to proceed with the expropriation of a right of way on the reserve. This authorization was obtained under the terms of the order-in-council P.C. 1141 of May 29, 1930. An expropriation procedure should have followed this order-in-council for title to have been conferred to the company.

The order-in-council P.C. 1141 of May 29, 1930 cannot in itself grant the company a right of way on the reserve lands. Following the decisions in the cases St. Catherine's Milling and Star Chrome, it is now clear that the exclusive legislative jurisdiction of the Federal Parliament on lands reserved to Indians does not give it title of ownership to these lands. The Federal Parliament could not, therefore, grant rights that it, itself, did not hold.

³¹ Both the translation and the original French version of the opinion have been included in the collection of documents submitted with this report. [Document No. 201.]

³² A footnote in the opinion here reads: "It should be noted that under the terms of a deed received before Edouard Cholette, Notary, on May 28, 1943 and published under the number 35058, the Cedars Rapids Manufacturing and Power Company "sold, transferred, conveyed and assigned ... all the rights of the Company in the transmission lines to Montreal Light, Heat and Power Co. being located in, upon or over ... lot 1 of the Domaine de la seigneurie du Sault St-Louis." Subsequently, the Act establishing the Quebec Hydro Electric Commission (S.Q. 1944, c. 22) stipulates the expropriation, as of April 14, 1944, of Montreal Light, Heat and Power Consolidated by the Quebec Hydro Electric Commission. Schedule A indicates the component companies of Montreal Light, Heat and Power Consolidated, which includes in particular the Montreal Light, Heat and Power Company and the Cedars Rapids Manufacturing and Power Company. The Hydro-Québec Act (R.S.Q., c. H-5) stipulates that the corporation is constituted under the name of Quebec Hydroelectric Commission or the abbreviation "Hydro-Quebec," and that, as of October 1, 1978, the corporation is known solely under the name of "Hydro-Québec."

³³ Footnote by Yale reads: "LAJOIE, Andrée, *Expropriation et fédéralisme au Canada*, Montreal, Presses de l'Université de Montréal, 1972, pp. 180-182."

We must therefore determine whether the company had the power to expropriate in accordance with the law. If so, we must also determine what procedures were required to confer a valid title to the company.

As for the power of expropriation, we have found some provisions in the Watercourses Act (S.R. 1925, c. 46) on which we believe we can base the company's power of expropriation.

Section 16 of the act stipulates that:

"Any hydraulic force formed by a lake, pond, water current or river, floatable or not, that belongs to any person, is declared to be of public interest, and the owner thereof may expropriate the adjacent lands, in such a way as to enable the said owner to use the lands in the manner and circumstances mentioned in this section.

Section 17 then states:

"Only the following are subject to expropriation pursuant to this section:

2-Moveables or parts of moveables required to set up roads that connect to the most useful public highway, and to install posts, lines, conduits and equipment for the purpose of transmitting power, light and heat, subject to approval by the town council of the municipality when said posts, lines, pipes and equipment are installed along public highways ..."

Section 21 stipulates that expropriation cannot take place unless a plan prepared by a land surveyor and an adequate description of the land to be expropriated are served by bailiff to the owner of the land. Section 22 stipulates that the expropriation must be previously authorized by the lieutenant governor in council. Section 23 refers to the Quebec Railways Act regarding the offer of indemnity, nomination of arbitrators and expropriation procedures.

Pursuant to section 99 of the Quebec Railway Act, the company must file a map or plan and book of reference and, in accordance with section 101 of the Act, put a notice in the newspapers published in the counties concerned. A month after filing the above, the company may contact the owners of these lands and enter into agreements or make arrangements relative to these lands and the indemnity to be paid. Section 111 of the Act provides that, following the payment or the legal offer of indemnity, the assignment of these lands by mutual agreement or arbitration award gives the company the power to take immediate possession of said lands. There is no provision which expressly requires that the deed of assignment or the arbitration award be filed with the registry office.

As it happens, Cedars Rapids Manufacturing filed the M2364 plan with the Registry of the Department of Indian Affairs and Northern Development showing the boundaries of the land required for the transmission line. It should be noted that the company paid an indemnity to the occupants of the lands required for the transmission line based on the assessment of the Department of Indian Affairs. An indemnity of 5% of the total amount representing the band's interest was also paid.

We maintain that the order-in-council P.C. 1141 cannot in itself have conferred title to the company. As for the procedure required to confer valid title to the company, we should note the following:

Firstly, we do not know whether the expropriation was previously authorized by the lieutenant governor in council pursuant to section 22 of the *Act on the system of running waters*.

Secondly, the M2364 plan was not deposited at the registry office pursuant to section 99 of the Quebec Railways Act but only at the Registry of the Department of Indian Affairs. In addition, we do not know whether notices were published in the county of Laprairie pursuant to section 101 of the said Act.

Finally, we did not find among the documents any assignment of immoveable or arbitration award conferring title to the company and granting

it the right to take possession of the lands in question. From her research, Ms. Valiquette was able to learn that no plan, notice or expropriation procedure was filed with Laprairie's registry office.

2- The purpose of the order-in-council P.C. 1605 of March 31, 1950 was to grant to the Quebec Hydro Electric Commission a right of way for the purposes of installing and maintaining a power transmission line. The Privy Council "pursuant to the provisions of section forty-eight of the Indian Act, R.S.C. 1927, chapter 97, is pleased to consent and doth hereby consent to the grant to the Quebec Hydro Electric Commission of the said right of way."

This order-in-council is taken in accordance with section 48 of the Indian Act cited above. The above comments regarding the order-in-council P.C. of May 29, 1930 apply in full. Thus, the order-in-council P.C. 1605 of March 31, 1940 authorized the expropriation by the Quebec Hydro Electric Commission of a right of way on the Kahnawake reserve. This order-in-council should, therefore, have been followed by an expropriation procedure in order to confer valid title to the Commission. This order-in-council also refers to the Act of the Quebec Hydro Electric Commission (S.Q. 1944, c. 22) and the Code of Civil Procedure of Lower Canada concerning the expropriation procedure.

The Commission's power of expropriation ensues from section 33 of the Act on the Quebec Hydro Electric Commission. This section stipulates that:

"With the authorization of the lieutenant governor in council, the Commission can acquire, by means of expropriation:

b) Any immoveables, servitudes or constructions required for the exploitation of hydraulic forces held by the Commission or for the protection, transmission and distribution of energy."

Section 39 stipulates that the expropriation is done in a manner provided by law for expropriation by the government of Quebec, when it is required for the purposes of the Roads Act, the Commission acting in the minister's stead and exercising the same powers. Now expropriations by the government of Quebec³⁴ were governed at that time by sections 1066a to 1066z of the Code of Civil Procedure. In summary, the procedure consisted in the registering, by deposit, of a general plan, an overall estimate of indemnities and a certificate to the effect that the expropriating party held an amount equal to twice the amount of the said estimate.

As it happens, the boundaries of the land required by the Commission was shown on the F3322 plan and was filed with the Registry of the Department of Indian Affairs. The Commission also entered agreements with and paid indemnities to each occupant of the lands in question, except to Louis Dailleboust. From the letters exchanged between the Department of Indian Affairs and the Commission, we learned that permission was granted by the Department, under the authority of order-in-council P.C. 1605. We did not, however, find a copy of this permission.³⁵

It is clear in our view that the order-in-council P.C. 1605 could not in itself confer title to the Commission. As for expropriation procedures, the following should be noted:

On one hand, we do not know whether the Commission obtained the previous authorization of the lieutenant governor in council in accordance with section 33 of the Quebec Hydro Electric Commission Act.

On the other hand, from her research Ms. Valiquette was able to learn that no notice, plan or procedure of expropriation was filed with the registry office in Laprairie.

It is likely that, since the Department had granted the above permission, the Commission did not think it necessary to follow through with the

³⁴ Author's footnote: "LAMONTAGNE, Denys-Claude, "La Loi sur l'expropriation et les titres immobiliers," R.D. - Doctrine - Title Deeds, Doc. 6a, nos. 57 to 62."

³⁵ In fact, Indian Affairs granted Hydro-Québec an easement; see the agreement dated June 1, 1950. [Document No. 137.]

expropriation procedure. It would be interesting to learn in accordance with which provision the said permission was granted and for how long it was granted. It seems to me that granting this permission was certainly not the appropriate procedure that should have followed the authorization of the governor general in council in accordance with section 48 of the Indian Act. Nonetheless, the scope of the permission granted would have to be assessed in order to determine whether it could have conferred certain rights upon the Commission.

Therefore, it would be appropriate for research to be done in order to locate this document and determine its legal worth.

... [regarding line 4] ...

... Finally, it should be noted that a good number of plans were filed by the Department of Natural Resources Canada (Canada Land Surveys Record) with the land register of lot 1 of the cadastral survey of the *Domaine de la seigneurie de Sault St-Louis*. Ms. Valiquette noted that several of these plans mention or show Hydro-Québec power transmission lines. These plans also sometimes make reference to plans #1065 and #M2364 accompanying the aforementioned federal orders-in-council P.C. 1362 and 1141 relative to transmission lines 2 and 4. However, even though these lands cannot be those constituting power transmission lines numbers 2 and 4, Ms. Valiquette also noted that some lands appeared as "expropriated" to Canada plan 5070 - Indian Affairs Surveys Records - File 21412 - May 5, 1959.³⁶

In conclusion, we have learned from our research at the registry office of the registration of Laprairie that no expropriation procedure was registered there. Can we consider that registration of these procedures with the registry office was not required, considering the exclusive legislative jurisdiction of the federal Crown over lands reserved to Indians and, consequently, that filing a plan or other document with the Registry of the Department of Indian Affairs and Northern Development was sufficient? Since this question falls more under your jurisdiction, I would appreciate having your opinion on this matter.

Even though this letter does not provide a definitive solution, I believe that it contains the information you will need to meet with representatives of Hydro-Québec. At that meeting, they should be presenting their position and, if necessary, provide additional information on the rights that they are revendicating [sic - claiming] and the documents or provisions on which they base their claims.

[Document No. 201]

³⁶ These lands were expropriated for approaches to a highway.

- i. The Indian Act in the 1927 Revised Statutes of Canada (c. 98) consolidated the amendments which had been made concerning the taking of Indian lands for public purposes:

...
 48. No portion of any reserve shall be taken for the purpose of any railway, road, public work, or work designed for any public utility without the consent of the Governor in Council, but any company or municipal or local authority having statutory power, either Dominion or provincial, for taking or using lands or any interest in lands without the consent of the owner may, with the consent of the Governor in Council as aforesaid, and subject to the terms and conditions imposed by such consent, exercise such statutory power with respect to any reserve or portion of a reserve.

2. In any such case compensation shall be made therefor to the Indians of the band, and the exercise of such power, and the taking of the lands or interest therein and the determination and payment of the compensation shall, unless otherwise provided by the order in council evidencing the consent of the Governor in Council, be governed by the requirements applicable to the like proceedings by such company, municipal or local authority in ordinary cases.

3. The Superintendent General shall, in any case in which an arbitration is had, name the arbitrator on behalf of the Indians, and shall act for them in any matter relating to the settlement of such compensation.

4. The amount awarded in any case shall be paid to the Minister of Finance for the use of the band of Indians for whose benefit the reserve is held, and for the benefit of any Indian who has improvements taken or injured.

...

[Document No. 1]

- ii. A detailed set of instructions to Indian agents was sent out in September 1933 by Deputy Superintendent General H. W. McGill. This circular gave instructions on reports required in connection with an application for a right-of-way, as follows:

...
 69. Surveyors in general, and the engineers of railway companies and other corporations, acting under proper authority, may be allowed to make necessary *surveys* across Indian Reserves; but no work of *construction* is to be allowed until the Indian Agent has been notified by the Department to allow the same to be proceeded with.

70. In the event of application being made to an Agent for rights of way, when notifying the Department to that effect he should, if he has received sufficient information from the applicant, also forward his report and valuations.

71. The following list covers the general phases to be considered when reports are required by the Department on rights of way for railways, roads, power lines, irrigation ditches, telegraph and telephone lines, pipe lines,--

1. Compensation per acre for unimproved land.
2. Compensation per acre for improved land.
3. Compensation per acre due to severance damage.
4. Amount of compensation due to band interest in land.
5. Amount of compensation due to individual Indian's interest in land.
6. Amount of compensation due to individual Indians for other improvements, such as buildings, clearing, fencing, etc.
7. Individual Indian compensation is to be listed giving name of Indian, nature of improvement and amount due. The band is held to have an interest in the holding of the individual Indian. This interest is usually protected by placing to the band account from 5% to 10% of the amount received for the improved land of the individual Indian. The Agent should recommend the percentage to be withheld. The total amount may be credited to the individual on resolution of the Council of the band, accompanied by the Agent's recommendation.

8. Location and nature of crossings.
 9. Whether fences should be erected as soon as construction is completed.
 10. If easements are to be granted, value of long or permanent easement is considered by the Department to be almost the full value of the land and payment may be demanded (a) by lump payment at a price per acre, (b) by an annual rental, and additional compensation is always demanded for any timber cut on or adjoining the right of way.
 11. Annual rental for right to occupy during pleasure of Superintendent General.
 12. *Reports* on Rwy. rights-of-way are to consider and cover Clauses 1, 2, 3, 4, 5, 6, 7 and 8.
 - A. On Roads, Clauses 1, 2, 3, 4, 5, 6, 7 and 9.
 - B. On Power Lines, Clauses 4, 5, 7, 10 (a) and (b).
 - C. On Pipe lines, telegraph and telephone lines, Clauses 4, 5, 7 and 11.
 - D. On irrigation ditches, Clauses 1, 2, 3, 4, 5, 6, 7, 8 and 9.
- [Emphases added]...

[Document No. 80]

APPENDIX B

SIX NATIONS I.R. NO. 40 POWER TRANSMISSION LINE EASEMENT

[The documents discussed below are included in the collection of documents submitted with this report. See Document No. 199.]

THIS INDENTURE made in quadruplicate, the first day of October in the year of our Lord one thousand nine hundred and twenty-nine,

BETWEEN:

HIS MAJESTY KING GEORGE THE FIFTH, represented by the Superintendent General of Indian Affairs, hereinafter called the Grantor,

- OF THE FIRST PART -

-and-

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, hereinafter called the Grantee,

-OF THE SECOND PART-

WHEREAS the Grantee is about to erect a transmission line or lines through the Six Nations Indian Reserve in the Townships of Tuscarora and Oneida in the County of Brant in the Province of Ontario;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of SEVEN THOUSAND SIX HUNDRED AND TWENTY-SIX DOLLARS AND FORTY-FIVE CENTS (\$7,626.45) of lawful money of Canada now paid by the said Grantee to the said Grantor (the receipt whereof is hereby acknowledged) the said Grantor doth grant unto the said Grantee the right, privilege and easement to use and occupy for the purposes of the Grantee for a period of thirty years from the date hereof certain lands and premises in the said Indian Reserve in the said County, containing by admeasurement 117.33 acres, which may be more particularly described as a strip of land one hundred feet in width, being fifty feet in width on either side of the Grantee's said transmission line and extending through the said Indian Reserve, being the lands and premises set out in Schedule "A" herein and shown on Plan numbered 7360 E.T. recorded in the Surveys Branch of the Department of Indian Affairs under M 2333.

AND without limiting the generality of the foregoing the Grantee shall be entitled to the following rights:-

- (a) To erect, maintain and operate a transmission line or lines and transmit electricity, and for such purpose to erect and maintain all such poles, towers, anchors, guys, braces, wires, conductors and other works as the Grantee may from time to time deem necessary;
- (b) To repair, inspect, alter, reconstruct, remove and/or renew its said works or any of them;
- (c) To keep the said lands clear of all buildings, erections, and structures and also clear of all such trees and brush as the Grantee may deem necessary;
- (d) To trim all trees on any adjoining lands which in the opinion of the Grantee may interfere with or endanger the works or operations of the Grantee or with the rights herein granted;
- (e) By its officers, agents servants and workmen to enter upon, pass and repass on or along the said lands at any and all times, on foot or with vehicles for any of the purposes of the Grantee.

The Grantee covenants and agrees to permit the crossing, entering upon, pasturing and cultivating of so much of the said lands as is not occupied by the works of the Grantee, by all persons entitled so to do and to similarly use the adjoining lands buy only upon condition that all such person crossing, entering upon, pasturing and cultivating the said lands do so entirely at their own risk, and that the Grantee shall not be liable for any damage or injury to persons or property occasioned thereby;

AND the Grantor covenants and agrees to indemnify and save harmless the Grantee from all claims and actions, costs, charges and expenses arising therefrom or in connection therewith.

THE said Grantor covenants with the said Grantee that he has the right to convey the rights hereby granted in the said lands to the said Grantee notwithstanding any act of the said Grantor.

AND that the said Grantee shall have quiet possession of the said lands.
The title to all works and equipment on the said lands shall remain in the Grantee.

THE rights herein granted shall be renewable for a further term of thirty years upon ninety days' notice in writing to the said Grantor.

THE burden and benefit of this Indenture shall extend to, be binding upon and enure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the said parties hereto have hereunto caused their corporate seals to be affixed, attested by the hands of their proper officers on their behalf.

... [signatures of Deputy Superintendent General of Indian Affairs, and the Chairman and Secretary of the Hydro Electric Power Commission of Ontario, executed from September-December 1932] ...

[Schedule A is a listing of names of proprietors, lot and concession numbers, townships, acreages]

The above cited easement agreement was renewed on December 21, 1961 (effective from October 1, 1959, the date of expiry of the above cited agreement). The renewal was for a period of 20 years (i.e., to terminate September 30, 1979) and involved a compensation payment of \$9,868.00. According to Six Nations Council, this renewal was approved by the elected council of the Six Nations and the locatees affected by the right-of-way. A further 10 year renewal was made for the period up to September 30, 1979. The renewal was approved by Six Nations Council.

A subsequent, recent renewal was made in July 1994 (effective from September 30, 1989) for a five year period, with an allowance for a further five year period. (This "permit" was in the form of a tri-partite agreement, the parties being the Minister of Indian Affairs and Northern Development on behalf of Her Majesty the Queen, *and* the Elected Council of the Six Nations of the Grand River Band of Indians *and* Ontario Hydro.)

Once again, the documents referred to in this appendix are provided with the collection of documents submitted with this report. [See Document No. 199.]

APPENDIX C
 Annual Rental paid to SLSA by
 Hydro-Québec under Licence No. 63-51 (formerly no. 61-103), from 1959-1996

(Amount of acreage 40.37 arp.² or about 31.3 acres)

April 15, 1959		\$430.00
April 15, 1960		\$420.00
April 15, 1961		\$420.00
April 15, 1962		\$420.00
April 15, 1963	Amendment August 7, 1963	\$1,015.00
April 15, 1964		\$1,015.00
April 15, 1965		\$1,015.00
April 15, 1966		\$1,015.00
April 15, 1967		\$1,015.00
April 15, 1968		\$1,015.00
April 15, 1969		\$1,015.00
April 15, 1970		\$1,015.00
April 15, 1971		\$1,015.00
April 15, 1972		\$1,015.00
April 15, 1973	Amendment January 26, 1973	\$1,850.00
April 15, 1974		\$1,850.00
April 15, 1975		\$1,850.00
April 15, 1976		\$1,850.00
April 15, 1977	Amendment December 20, 1977	\$1,850.00
April 15, 1978		\$2,285.00
April 15, 1979		\$2,285.00
April 15, 1980		\$2,285.00
April 15, 1981	Amendment Feb. 3, 1981	\$3,200.00
April 15, 1982		\$3,200.00
April 15, 1983		\$3,200.00
April 15, 1984	Amendment April 13, 1984	\$3,305.00
April 15, 1985		\$3,305.00
April 15, 1986		\$3,305.00
April 15, 1987		\$3,305.00
April 15, 1988		\$3,305.00
April 15, 1989		\$3,305.00
April 15, 1990	Amendment January 1990	\$4,480.00
April 15, 1991		\$4,480.00
April 15, 1992		\$4,480.00
April 15, 1993	Amendment April 15, 1993	\$5,790.00
April 15, 1994		\$5,790.00
April 15, 1995		\$5,790.00
April 15, 1996		\$5,790.00

TOTAL: \$93,975.00

REPORT:

**The Expropriation of Kahnawake Territory for a 110 kv Transmission
Line by Montreal Light, Heat & Power Consolidated (succeeded by Quebec
Hydro-Electric Commission) - Line 3**

**Prepared by Joan Holmes & Associates, Inc.
for the Mohawk Council of Kahnawake
June 1997**

REPORT:

**THE EXPROPRIATION OF KAHNAWAKE TERRITORY FOR A 110 KV TRANSMISSION LINE
BY MONTREAL LIGHT, HEAT & POWER CONSOLIDATED (SUCCEEDED BY QUEBEC
HYDRO-ELECTRIC COMMISSION) - LINE 3**

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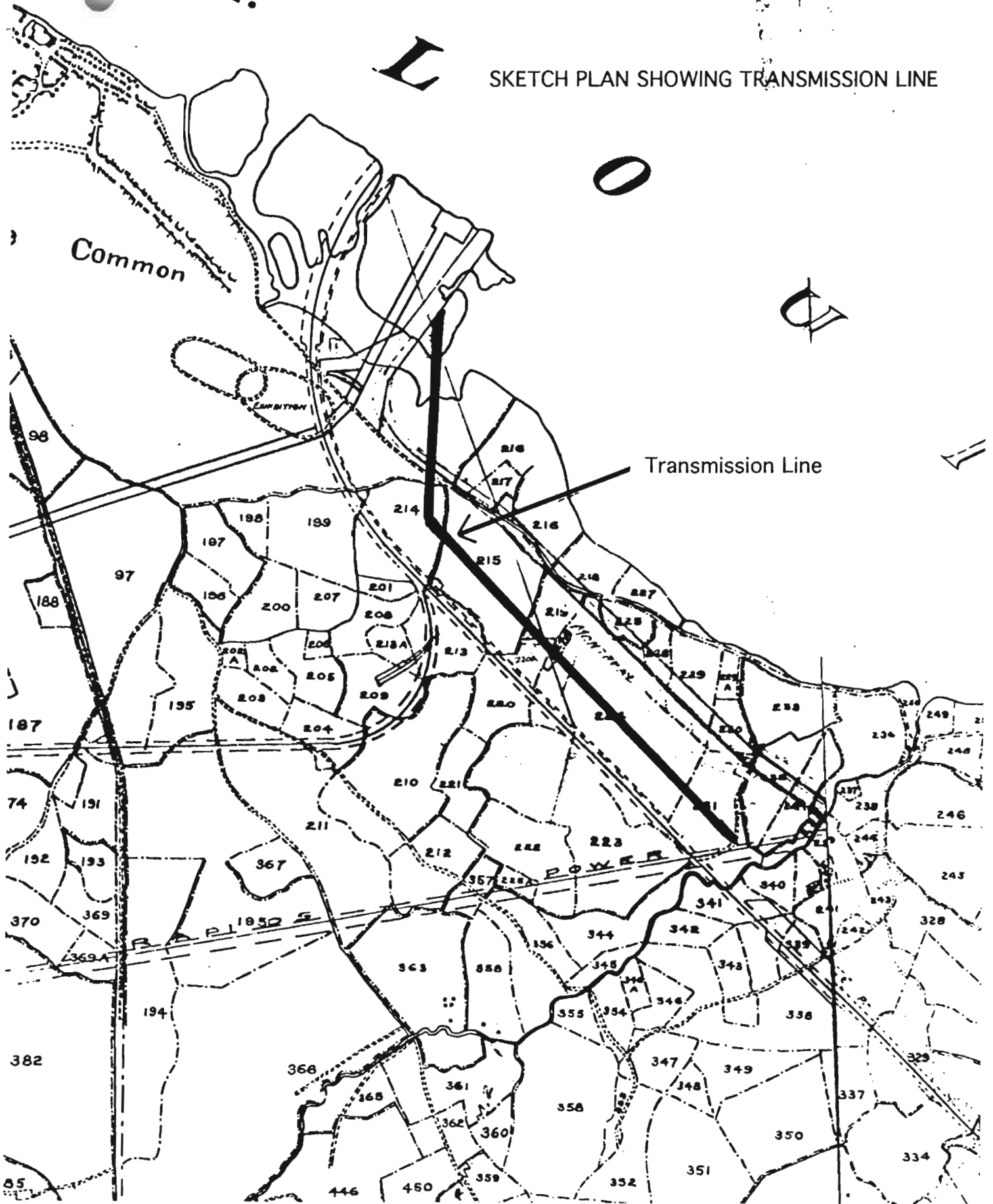
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SKETCH PLAN SHOWING TRANSMISSION LINE



Cedar Rapids Transmission Line Deaunomas to Month

Frank Leask
351

Made and prepared by *Donald L. ...*
Outside Land Survey

THROUGH
THE CAUGHNAWAGA RESERVE
County of Leitchfield
Scale: 1" = 200' P.M.

Montréal, November 19th 1951

Map No. F. 3548
Date May 12, 1952
Plan No. 21312
Date July 17, 1952

Estimated quantity of Cedar in ...
for 200' wide strip ...



Mercier Bridge

Caughnawaga Indian Enclave
The Common

Dial Telephone Cable

The Common
Caughnawaga Indian Enclave

THE COMMON
The Caughnawaga Indian Enclave

1 of 1 Red. 15x 1

Note: Boundaries are Approximate

3548

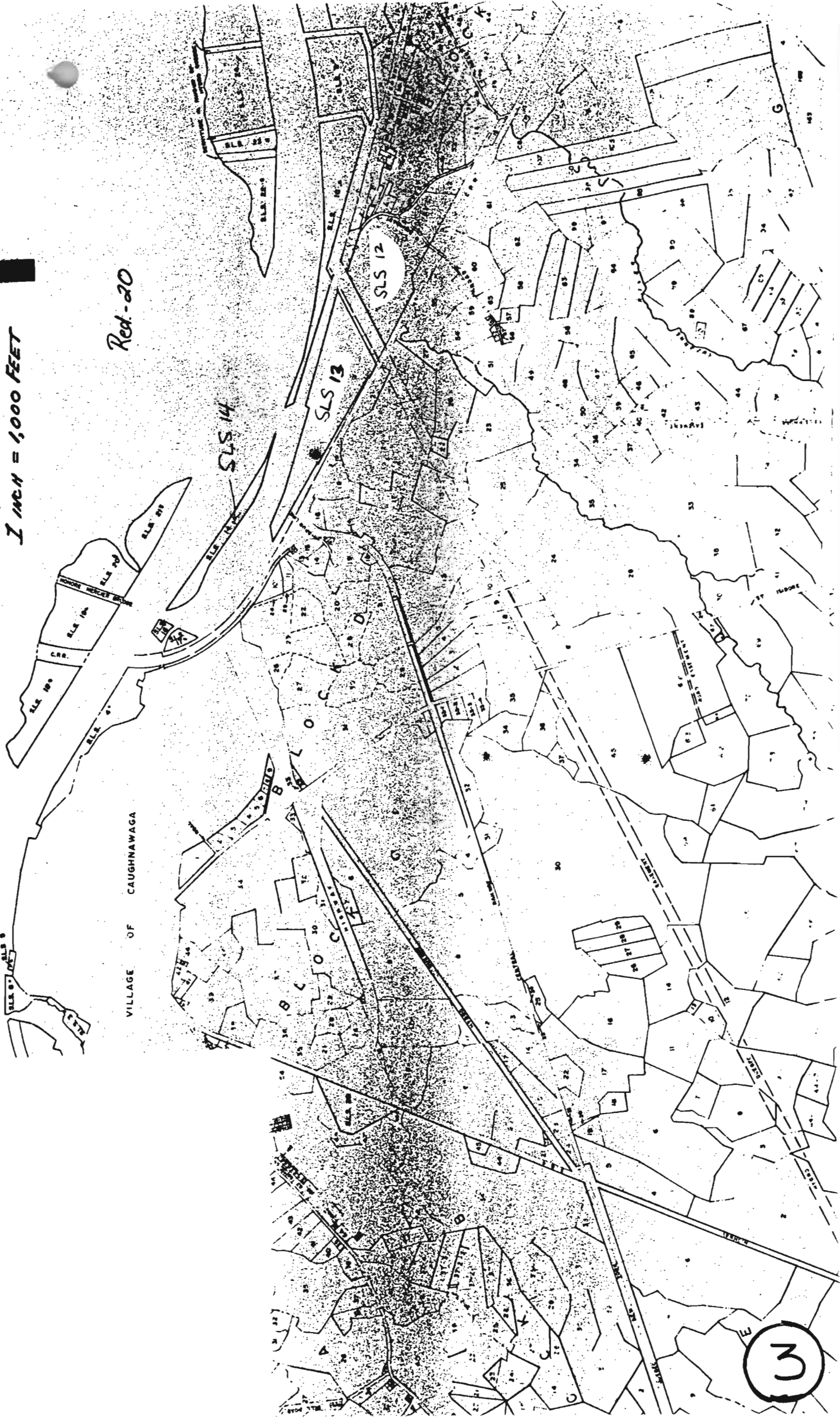
Red. 15x 1

EXTRACT & REDUCTION OF CLSR 3548

1 INCH = 1,000 FEET

Red-20

VILLAGE OF CAUGHNAWAGA



3

CHRONOLOGY OF EVENTS

ABBREVIATIONS:

BCR	Caughnawaga Band Council Resolution
DIA	Department of Indian Affairs
H-Q	The Québec Hydro-Electric Commission
IR	Caughnawaga Indian Reserve No. 14
MLH&P	Montreal Light, Heat and Power Consolidated
OC	Order-in-Council
r/w	right-of-way

1943

- March 10 MLH&P informs DIA that they want to run a power transmission line across Caughnawaga IR for duration of WWII and one year after its conclusion in order to safeguard power supply to Montreal in event of enemy attack. The plan forwarded with the application indicated that an area of about 11.64 acres would be needed for the proposed right-of-way, which would be about 75 ft. wide; 13 "Pole Structures" would be erected.
- March 22 DIA's Supt. of Reserves & Trusts instructs MLH&P to contact Caughnawaga Indian Agent to make arrangements for officer of MLH&P to go to IR to meet with Indians.
- April 5 Locatees give Frank McDonald Jacobs authority to act on their behalf in exchange for 10% share of compensation monies to be paid for r/w across their properties.
- May 19 MLH&P informs DIA that the company and the locatees' representative, Frank McDonald Jacobs, were unable to agree upon any arrangements and the matter would have to go to arbitration.
- May 24 Indian Agent reports to DIA that Peter K. Jacobs is willing to accept appointment as representative of Band in matter of securing r/w for transmission line.¹ Also, Frank McDonald Jacobs satisfied with decision to go to arbitration over locatee lands.
- May 26 Director of DIA informs MLH&P that they (DIA) are applying for an OC to permit company to construct the temporary transmission line on condition that compensation is determined by investigation by officers of DIA.
- June 4 OC (P.C. 4576) passes which authorizes MLH&P, having "statutory powers of expropriation", to enter IR to erect and maintain transmission line until one year after conclusion of WWII. Granted under authority of Sec. 48 of Indian Act. DIA officials will investigate compensation to be paid to individual occupants of properties involved.
- July 5 DIA informs Indian Agent that Jude Thibault, Inspector of Indian Agencies, would visit IR to meet with Peter Jacobs and Frank McDonald Jacobs on July 9 to discuss compensation.
- July 9 Committee consisting of Agent Brisebois, Thibault, P. Jacobs along with F. McD. Jacobs meet and have "difference of opinion" after long discussion. Two representatives from MLH&P arrive in afternoon. Committee decides that compensation totalling \$636.20 would be acceptable.
- August 5 RCMP reports that they were called to IR because "Mayor" of Caughnawaga was instructing men not to work on new transmission line. Mayor told that his permission and permission of Council not required in order to start project.
- August 30 MLH&P informs DIA Director that they will pay the sum of \$636.20 despite their belief that it is "considerably in excess of the prices we pay for similar rights elsewhere." Cheque forwarded.
- September 9 DIA's Supt. of Reserves & Trusts forwards cheques to Indian Agent (for John Beauvais \$69.98; John Jacco \$190.62; William Perras \$2.97; F. McDonald

¹ No evidence was found that Peter K. Jacobs had been chosen by the Band to act on their behalf.

Jacobs \$41.56-identified as his 10% commission²). Notes that \$110.52 and \$57.10, the amounts payable to estates of Leborgne and Cross respectively, were funded to the estates.³ The \$163.45 payable to Band for common lands crossed was credited to their capital account. [No signed agreements on file.]

1946

- May 8 H-Q⁴ notifies DIA that they want a two or three year extension of the right to maintain the temporary line as the permission granted by OC 4576 in 1943 is due to expire in August.
- May 11 DIA replies that H-Q should submit a proposal to have term extended to a fixed date on payment of additional compensation.
- August 31 H-Q informs Commissioner Taggart of DIA that they want a further term of 3 years. The sum of \$490.37 offered as compensation for the properties of the three locatees, the two estates, and the common lands--11.64 acres total involved.
- September Indian Agent Brisebois signs agreements on behalf of the Band for the common land (\$118.20) and for the Leborgne and Cross estates (\$84.80 and \$57.10 respectively) to allow the extension of the term. The three locatees--Jacco, Perras and Beauvais--sign agreements on their own behalf (\$163.30, \$2.97, \$64.00 respectively).⁵
- October 29 Commissioner Taggart forwards signed agreements to DIA, noting that Indian Agent "signed as Administrator for the two Estates Leborgne and Cross; and also on behalf of the Band, rather than raise the usual unreasonable uproar and opposition sure to be voiced if the present Council is in any way consulted."
- November 7 OC (PC #4605) authorizes continuance of r/w until December 31, 1949 (just over three years).

1947

- January Compensation is paid out to locatees and funded to the two estates and to the Band's capital account.
- March 21 H-Q advises that they are connecting the temporary line with another transmission line (Line 2).

1949

- November 14 H-Q applies to DIA for further extension of right to maintain temporary transmission line until December 31, 1951.
- November 30 DIA instructs H-Q to take up matter of additional compensation with Indian Agent.

1950

- April 12 H-Q advises DIA that they have received acceptance from the Indians affected by the extension of the right to maintain the temporary line. Total compensation is \$326.91.⁶ [No signed agreements on file but do have letter from one locatee (Dailleboust) which states that she signed an agreement in January 1950.]
- May 9 OC (PC #2317) authorizes continued use of temporary transmission line until December 31, 1951.
- May 17 Cheques forwarded for payment.

² The origin of the amount of \$41.56 paid to Jacobs is not known. He was to be paid a 10% commission. Interestingly, the sums paid to the locatees, estates, Band and to Jacobs, total \$636.20. This was the total amount paid by MLH&P.

³ The documentation does not indicate who negotiated and accepted the compensation paid for the estates.

⁴ MLH&P was expropriated by Québec government; the Québec Hydro-Electric Commission, or Hydro-Québec, was founded in April 1944.

⁵ It should be explained that certain of the compensation amounts paid were lower than what was paid in 1943. This was due to the fact that compensation had been paid in 1943 for the cutting of trees; the 1946 compensation was only for the right to continue to maintain the line for 3 years.

⁶ Broken down as follows: Frank Leafhollow \$42.67, John Jacco \$108.87, William Perras \$1.98, Mr. & Mrs. Chester Dailleboust \$56.53, Estate Frank Cross \$38.06, the Band for the Common \$78.80.)

1951

- September 21 H-Q advises that they wish to obtain "perpetual servitude" for the transmission line.
- September 27 DIA informs H-Q that they must deposit plan of survey, that agreements with individuals must be entered into, and that a BCR must be passed approving grant of easement for so long as land required.

1952

- January Locatee Marguerite Dailleboust (Diabo) protests against H-Q's request for perpetual servitude. She indicates that when she and her husband agreed to extension of term in 1950, they were told that line would be removed by summer 1951. H-Q writes her husband stating they will have to arbitrate if he does not accept offer of \$250 for perpetual servitude. H-Q's letter forwarded to Minister of DIA by Mrs. Dailleboust along with questions about whether she must consent to the perpetual servitude.
- February 9 DIA Minister writes long letter to Mrs. Dailleboust explaining that H-Q can take lands without an owner's consent under provincial statute. Sec. 35 of Indian Act allows that, with consent of Governor General, perpetual servitude which H-Q seeking can be granted without her consent. However, she does not have to agree to compensation. If no agreement as to compensation reached, arbitration will proceed under provisions of provincial statute.
- Band Council passes BCR authorizing grant to H-Q of easement for transmission line running from Mercier Bridge to Lot 214 (i.e. through the common lands) for sum of \$242.
- February 26 DIA advises H-Q that OC will be applied for once agreement reached with all individual land owners.
- March 6 Marguerite Dailleboust refuses H-Q's \$250 offer.
- May 8 H-Q forwards DIA copies of survey plan and copies of agreements entered into with all individual land owners, except Chester and Marguerite Dailleboust [no copies of agreements on file]. Total compensation paid \$1,077.⁷
- June 27 DIA tells H-Q that they cannot deal with their request for perpetual easement until *all* land owners consent. Recommend that H-Q divide their application into two parts, the first for the part of the line which the owners have consented to and the second for the Dailleboust property. H-Q does so.
- August 21 OC (PC #3821) authorizes H-Q, pursuant to Sec. 35 of Indian Act, to use their statutory powers in relation to lands for which agreement has been reached as to compensation (i.e. all lands except Daillebousts').
- Locatees paid (except Dailleboust).
- September DIA tells H-Q that they must conclude agreement with Daillebousts or have matter arbitrated.

1953

- April DIA writes to H-Q inquiring whether agreement yet reached with Daillebousts.
- May H-Q replies that they have received no reply from Daillebousts and will proceed with arbitration.

1954

- April Survey plan forwarded to DIA by H-Q along with report that their own real estate department is dealing with Dailleboust arbitration matter.

1955

- January H-Q advises DIA that they do not wish to take any further action in matter of expropriation procedures with respect to Dailleboust compensation because impending St. Lawrence Seaway construction will necessitate relocation of the transmission line.

⁷ \$1077 represents following individual sums: Band Council \$242, Estate Frank Cross \$170, John Jacco \$500, William Perras \$5, Frank Leafhollow \$160.

DIA replies that H-Q should negotiate interim agreement with Daillebousts for right to occupy their property from January 1, 1952 to completion of seaway canal.

August Lease entered into between Daillebousts and H-Q from December 31, 1951 for 25 year term at annual rental of \$56.43. Sum of \$310.95 payable upon acceptance of agreement, with interest, to cover up to December 31, 1955.⁸

1955-1956 In September 1955 and February and October 1956 about 1350 acres of Caughnawaga I.R. taken for seaway purposes. Power transmission line lies entirely within lands taken.

1966-1978 OCs passed in 1966 and 1976 transfer more than 800 acres taken for seaway purposes back to DIA. Property is returned to reserve status by 1978 OC. Plans of returned lands do not show the power line servitude.

1995

July H-Q states that line was dismantled and property rights held by H-Q were cancelled when land was expropriated by SLSA.

⁸ Note that the rental payment for 4 year period is significantly more than the \$250 which H-Q had been offering the Daillebousts for a perpetual servitude.

APPLICATION FOR AN EASEMENT OVER CAUGHNAWAGA INDIAN RESERVE FOR THE PURPOSE OF ERECTING A TEMPORARY TRANSMISSION LINE, 1943

1. On March 10, 1943, Louis O'Sullivan, General Executive Assistant of Montreal Light, Heat and Power Consolidated, notified the Department of Indian Affairs that his company was planning to build a temporary 110 kv transmission line to safeguard the Montreal power supply in the event of an enemy attack (World War II). The line would cross the St. Lawrence River via the existing Mercier bridge.

Montreal Light, Heat & Power Consolidated (hereinafter called the Company) is undertaking the construction of a temporary 110,000 volt transmission line crossing over the St. Lawrence River, by way of Mercier Bridge, to safeguard the supply of power to Montreal in the event of failure, through sabotage or enemy action, of the existing high tower crossing between Caughnawaga and Ville Lasalle built by the Cedars Rapids Manufacturing & Power Company in 1930.

This crossing has a span of 3500 feet over the St. Lawrence River and is supported on 322 feet high suspension towers and on special anchor towers; if destroyed it could not be rebuilt in less than four or five months time, and as the line carries a load of approximately 250,000 horse-power its destruction would shutdown a substantial portion of the plants in the Montreal area engaged in the war effort.

To connect the temporary crossing with the steel tower line on each side of the existing crossing, short sections of "H" frame wood pole line will be constructed from both ends of Mercier Bridge to the tower line and thus the Company will have available for service a spare crossing less vulnerable to serious and lengthy interruption.

On the south shore, the wood pole line will extend over lands of the Kanawake Indian Reservation, from the south end of Mercier Bridge to a point approximately one and a half miles south-east therefrom, where it will tap the steel tower line. The route of this line and the properties affected are shown on our plan No. S-10116, two copies of which are enclosed.

The Company has completed negotiations with the Provincial Government for the installation of its crossing on Mercier Bridge and has also obtained from proprietors on the north shore, the necessary easements on properties over which the line will be built. It now desires to obtain easements over the lands forming part of the Kanawake Indian Reservation along the route indicated on the plan hereinabove referred to.

The easements would provide for the construction of a temporary 110,000 volt line on "H" frame wood pole structures (as shown on enclosed drawing No. LS-10995) spaced from 400 to 600 feet apart and would apply over a strip of land 75 feet in width, to ensure adequate clearances from trees and other objects which might endanger the safe operation of the line. Minimum clearances from conductors to ground will be approximately 28 feet. The term of these easements would be for the duration of the war and one year thereafter.

The Company has discussed this matter with the Department for Munitions and Supply, who are seriously concerned regarding the power supply to the Montreal area, and all the necessary approvals have been obtained both from the Federal and Provincial authorities.

It is urgent that the Company should be in a position to proceed with actual construction as soon as possible, and with the view of eliminating any unnecessary delays in the negotiations for right of way with the Indian owners of properties to be traversed by the line, we are now submitting this application to your Department for the right to construct the line through the Indian Reservation.

We would appreciate if you advise us under what terms and conditions the Company would be permitted to construct this line and what steps should be taken by it to secure the necessary rights in compliance with the regulations of your Department.

[Document No. 3]

The plan (Drawing S-10016) forwarded with O'Sullivan's letter, dated February 27, 1943, and revised April 17, 1943, listed the names of the Mohawk proprietors, their lots, and the acreage to be affected by the proposed right-of-way:

Proprietor	Lot No.	Cleared Land	To be Cleared	Total	No. of Pole Structures
John Beauvais	231	.75	.55	1.30	2
John Jacco	224	2.17	1.14	3.31	3
John Jacco	224A	-	.22	.22	-
John Jacco	220	-	.58	.58	1
William Perras	219	-	.06	.06	-
Est. [Estate] Mathias Leborgne	215	.64	1.52	2.16	2
Est. [Estate] Frank Cross	214	1.07		1.07	2
Dept. of Indian Affairs	The Common	1.13	1.81	2.94	3
TOTALS		5.76	5.88	11.64	13

[Plan No. 1]

- Some twelve days later, D. J. Allan, Superintendent of Reserves and Trusts, Indian Affairs, notified O'Sullivan that he should contact the Indian Agent at Caughnawaga, F. Brisebois, and:

... have him arrange for an officer of your Company to proceed to the Reserve and meet the Indians concerned so that options may be secured covering the land required for the transmission line right of way and payment for the trees or other improvements that may have to be removed.

[Document No. 4]

- By an agreement made April 5, Frank McDonald Jacobs was given authority to act on behalf of the locatees who would be affected by the planned transmission line right-of-way. Jacobs would receive a 10% commission in return for his services. Signatories to the agreement were W. Perras, John Jacco and John Beauvais. [Document No. 5.]
- Louis O'Sullivan informed D. J. Allan that he had not been able to come to satisfactory arrangements with the Indians. His letter was written on May 19, 1943, and is as follows:

We wrote you on March 10 in reference to a temporary transmission line we propose to build through the Kanawake Indian Reserve for the purpose of insuring the power supply to Montreal in case of failure of our existing high tower crossing over the St. Lawrence River. In your reply of March 22, you suggested that we should first endeavour to conclude arrangements for the necessary right of way, through the Indian Agent, Mr. Brisebois, and with the Indians concerned.

Our representatives have held conferences with Mr. Brisebois, and Mr. Frank McDonald Jacobs who holds a power of attorney to act for the interested Indians, but to date we have not been able to conclude any satisfactory arrangements and we now find it necessary to apply to your Department for arbitration.

Our last proposal to Mr. Jacobs stipulated that for the duration of the war and one year thereafter, the Company would have an easement over a strip of land 75 ft. in width across the properties of the Indians, as shown on our drawing S-10116, granting the Company the right to erect and maintain a 110,000 volt transmission line and to cut all trees and brush within the limits of the said strip. For the rights granted, the Company would agree to pay the following prices:

Price of easement per acre of right of way	\$15.00
Additional compensation per acre for land covered	25.00

with brush and small trees	
Price for the installation and erection of double wood pole suspension structures	5.00
Price for double wood pole anchor structures	10.00

It had also been agreed that if any valuable timber was cut the Company would pay additional compensation based on a fair valuation of such timber. But after an inspection of the right of way in company with Mr. Jacobs, it was ascertained that there was no such valuable timber involved along the route of the proposed line.

In view of the temporary nature of this line, and of the fact that it is being built purely as an emergency stand-by to insure war production in case of failure of our main crossing, we consider that the above prices constitute liberal compensation to the Indians for any inconvenience which they may suffer as a result of the construction of this line over their lands.

Mr. Jacobs will not see matters in this light and he has informed us that the only basis on which he is prepared to deal with us for his clients would be as follows:

Price of easement per acre of right of way	\$30.00
Additional compensation per acre for land covered with brush and small trees	25.00
Price for the installation and erection of double wood pole suspension structures	10.00
Price for double wood pole anchor structures	25.00

To arrive at the prices which we have offered Mr. Jacobs, we have referred to settlements for perpetual servitudes in various parts of our Province and our offer for a temporary easement is higher than what has been paid for perpetual servitudes in all cases. Furthermore, our Public Service Board and the Superior Court have established a basis of compensation for easements required for transmission lines and we would hesitate to pay the prices asked by Mr. Jacobs as this would set a rate out of proportion with equivalent rights or greater rights obtained everywhere else.

For these reasons we now find it necessary to ask your Department to intervene in the negotiations so that we may reach a settlement which will enable us to proceed with the construction without delay.

The construction of this line is very urgent and is undertaken on the suggestion of the Department of Munitions and Supply who are concerned as to the continuous supply of power to the war industries on the Island of Montreal. We are prepared to do everything we can to expedite its construction but we now look forward to your Department to do whatever it can to facilitate matters for us.

P. S. Enclosed is a revised copy of our Drawing No. S-10116 on which corrections have been made to the list of proprietors.

[Document No. 6]

5. On May 24, 1943, F. Brisebois, Indian Agent, Caughnawaga, informed D. J. Allan that:

I wish to inform you that on my return from Ottawa, Peter K. Jacobs of this reserve was interviewed relative to his proposed appointment as representative of this Band in the matter of securing land for a temporary power line to pass through part of this Reserve.

Mr. Jacobs is also quite willing to accept the appointment and has requested to be advised a few days in advance as to when his services will be required. Mr. Frank McDonald Jacobs has also been informed of your decision and appears to be quite satisfied, with an arbitration.

[Document No. 7]

On May 26, the Director of Indian Affairs, H. W. McGill, replied to O'Sullivan's May 19 communication, stating that steps would be taken to obtain an Order-in-Council:

... We note your difficulty in arriving at an agreement with the Indian owners of the lands involved as to compensation for this right of way and your representations in this connection have received consideration.

This Department is requesting the authority of His Excellency the Governor General in Council to permit your Company to enter the Caughnawaga Reserve for the purpose of constructing this temporary transmission line, subject, however, to the condition that the matter of compensation to the Indians concerned will be determined following investigation by officers of this Department and approval by the Minister.

This office will advise you at once if and when the required Order in Council is passed and it is suggested that entry upon the Reserve for the purpose in question should not be made until this authority is obtained.

[Document No. 8]

7. Indian Agent F. Brisebois was advised on May 31 that the O.C. would be obtained first and then steps would be taken to arrive at compensation:

... It has been decided to first get an Order-in-Council authorizing the Company to enter the Reserve and take the lands for the purpose required and after that has been done we proposed to proceed as originally planned and have Mr. Jacobs, Mr. White [Surveyor from the Department of Indian Affairs] and yourself sit in with representatives of the Company and the Indians to arrive at a proper basis of compensation. The Company have been so advised and we will communicate with you again when we have received the reaction of the Company to this suggestion.

[Document No. 9]

8. Order-in-Council P.C. 4576 was passed on June 4, 1943, authorizing the Montreal Light, Heat & Power Consolidated, to enter the Caughnawaga I.R. for the purpose of constructing and maintaining a temporary power line until one year after the end of the war. The individual Indians affected by the temporary loss of their land or improvements were to be compensated:

WHEREAS the Montreal Light, Heat & Power Consolidated, having statutory powers of expropriation, has applied for permission to enter upon the Caughnawaga Indian Reserve for the purpose of constructing and maintaining for the duration of the present war and one year thereafter a temporary power transmission line;

AND WHEREAS the Minister of Mines and Resources reports that the construction of this temporary power transmission line is in the public interest and the Caughnawaga Band and the individual Indian occupants of the lands affected will, following investigation by officials of the Department of Mines and Resources, be compensated for such temporary loss of lands or improvements in such manner and in such amounts as may be considered fair and reasonable by the said Department;

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Mines and Resources and in accordance with the provisions of Section 48 of the Indian Act, Chapter 98, R.S. 1927,¹ is pleased to authorize and doth hereby authorize Montreal Light, Heat & Power Consolidated to enter upon the Caughnawaga Indian Reserve with full liberty of ingress, egress and regress at all times for its servants, agents and workmen and all other persons by its authority or permission at any time and from time to time, either with or without horses and other animals, wagons and other

¹ Sec. 48 is cited in Appendix A at the end of this report. For a copy of the actual act, see Document No. 1.

vehicles for the purpose of carrying out the construction and maintenance of the presently proposed temporary power transmission line for the said period of the duration of the present war and one year thereafter.

[Document No. 10]

9. Director H. W. McGill supplied Agent Brisebois with instructions on reaching settlements with the Caughnawaga land owners:

Further in reply to your letter of May 24th last, concerning the above subject, I now wish to inform you that Inspector Thibault [Inspector of Indian Agencies, Indian Affairs] will visit the Caughnawaga Reserve on July 9th next and you are requested to notify Peter Jacobs to attend a meeting in your office at 10 o'clock in the morning of that day for the purpose of considering the matter of proper compensation to be paid by the Montreal Light, Heat and Power Consolidated for the privilege of constructing and maintaining this transmission line during the period of the war and one year thereafter. You are authorized to preside at this meeting and with the assistance and co-operation of Inspector Thibault and Peter Jacobs consider this matter carefully and then report your finding or decision to this office.

The Branch file concerning this matter will be with Inspector Thibault and available for examination and the documents therein indicate the rates of compensation which the company is prepared to pay and the demands which have been made by Frank McDonald Jacobs, acting presumably in behalf of the property owners or other interested parties on the Reserve. It might be advisable to inform Frank McDonald Jacobs of the time and place of this meeting in order that he may have an opportunity of making such representations as he may consider proper in behalf of the persons whom he is authorized to represent.

[Document No. 11]

10. Agent Brisebois carried out the above instructions and a committee consisting of Inspector Thibault, Peter Jacobs and Agent Brisebois met on July 9th. Frank McDonald Jacobs was present:

According to instructions contained in your letter of the 5th of July instant, a meeting was held in my office on Friday the 9th instant at ten o'clock, at which were present Inspector Thibault, Mr. Peter Jacobs and myself. Mr. Frank McDonald Jacobs duly authorized to represent about two thirds of the interested property owners, was also present.

After long discussion over the matter, there appeared to be a difference of opinion between Inspector Thibault and Mr. Frank Jacobs and it was agreed upon to adjourn the meeting to the afternoon and try to have the representative of the Montreal Light Heat and Power attend the afternoon meeting for further information.

At the afternoon meeting, besides the committee of three and Mr. Frank McDonald Jacobs, were also present Messrs. Farmer and Gagnon as representing the Company. Long discussion took place, Inspector Thibault being satisfied with the explanations given by the representatives of the Company, the meeting ended.

The the [sic] Committee, having duly considered carefully the matter, beg to submit their decision and recommendation as follows:

"The Company claims that their offer is considered just and fair, and based on other compensations paid in the surrounding district. Figures on their offer being calculated on a possible three year term, which are also agreed upon by Mr. Frank Jacobs. The Company is of opinion that the fact of paying higher prices at Caughnawaga might create a precedent. It appeared that the Company was not against paying the difference between their offer and and [sic] the amount requested by the indians [sic], their main objection being to avoid creating the precedent.

Mr. Jacobs declared that the claim of the Indians was based on a three year period, however, it might be for four or five years, but they were satisfied to take the risk.

Mr. Jacobs also considers that there can be no comparison between prices paid on an Indian reserve and outside of a reserve. The Indian reserve is not governed by any Public Utility Commission but, rather in charge of the Indian Affairs Branch at Ottawa.

Finally, Mr. Jacobs claims that the prices asked by the Indians is only fair and just."

The Committee recommends that the Montreal Light Heat and Power Consolidated, be requested to pay to the parties interested in the project of a Temporary Transmission Line on part of the Caughnawaga Reserve, the sum of six hundred and thirty six dollars and twenty cents (\$636.20) being the total of the following items:

Price of easement per acre of right of way	11.64 acres @	\$30.	\$349.20
Additional compensation per acre for land covered with brush and small trees	5.88 acres	25.	147.00
Price for the installation and erection of double wood pole suspension structures	11 poles @	\$10.	110.00
Price for double wood pole anchor structures	2 "	@ \$15. %%% [sic]	<u>30.00</u>
		TOTAL	\$636.20

The Committee:

Frs. Brisebois
Indian Agent

Jude Thibault
Inspector of Indian Agencies

Peter K. Jacobs
of Caughnawaga Indian Reserve

[Document No. 12]

11. A RCMP report from August of 1943 indicates that "Mayor" Lazare of Caughnawaga was instructing Caughnawaga men to stop working on the new transmission line. Two officers went to the reserve after a complaint was made by the Montreal Light, Heat and Power Co., and were then accompanied in a visit to the Indian Agent's office by Lazare:

... Mr. Lazarre [sic] stated that he was of the opinion that the Major and the Council should have been approached and their permission obtained before any such project was undertaken. When it was explained by the Indian Agent that it was not necessary for the Department to ask the Mayor of the Council permission to undertake any project on the Reservation, he concluded that the Agent was correct in his statement.

...

[Document No. 13]

12. On August 30, 1943, Louis O'Sullivan, General Executive Assistant of Montreal Light, Heat and Power Consolidated, informed Indian Affairs' Director, H. W. McGill, that the power company had decided to accept the compensation figures set by the Special Committee:

... we have decided to accept them although they are considerably in excess of the prices we pay for similar rights elsewhere.

We are accordingly enclosing our cheque in the amount of \$636.20 payable to the Receiver General of Canada and it is our understanding that this money will be distributed by your Department to the parties entitled to compensation.

We appreciate the co-operation which your Department has given us in expediting the granting of our application and enabling us to enter the premises to start the construction of this line.

[Document No. 14]

13. D. J. Allan, Superintendent, Reserves and Trusts, wrote to F. Brisebois, Indian Agent, on September 9, 1943, with a summary of the compensation payments made for the right-of-way.

... we have now received the agreed compensation to the owners of property affected by the Transmission Line and in accordance with the schedule of owners and the acreage affected, there are going forward to you cheques as follows:-

John Beauvais	\$69.98
John Jacco	\$190.62
William Perras	\$2.97
F. McDonald Jacobs	\$41.56

The amount in favour of Jacobs represents his ten per cent commission in accordance with the agreement he reached with the locatees.

Under the terms of the schedule, \$110.52 is payable to the estate of Mathias Laborgne and \$57.10 to the estate of Frank Cross. These amounts have been funded to the respective estates pending ascertainment as to the heirs entitled thereto. These matters will be discussed further on the relevant estate files.

The compensation of \$163.45 payable in connection with Band land has been credited to the capital fund of the Caughnawaga Band.

[Document No. 15]

14. McGill informed O'Sullivan that the cheques were being forwarded on the same day. His letter concluded:

...
As stated in your letter [Aug. 30th] distribution of the above amount is being made to the Indian owners affected by the Transmission Line and in so far as we are concerned with the issuance of these cheques, the entire matter will be most successfully concluded.

[Document No. 16]

15. A memorandum written by Commissioner C. H. Taggart, Indian Affairs, on December 3, 1946, listed the names of the Mohawk property holders, the properties involved and the compensation paid in connection with the temporary transmission line granted by Order-in-Council P.C. 4576:

...

<u>Reserve</u>			
<u>Lot No.</u>	<u>Holder</u>	<u>Area</u>	<u>Amt. Paid</u>
231	John Beauvais	1.30	\$69.98
224	John Jacco	3.31	
224A	" "	0.22	
220	" "	0.58	\$190.62
219	William Perras	0.06	2.97
215	Estate Mathias Leborgne	2.16	\$110.52
214	Estate Frank Cross	1.07	\$57.10
The Common	Band (Dept.)	2.94	\$163.45

[Document No. 34]

THE APPLICATION FOR A THREE YEAR EXTENSION OF RIGHT TO MAINTAIN THE TEMPORARY LINE, 1946-1947

16. As noted above, the temporary transmission line was authorized to one year after the conclusion of World War II. On May 8, 1946, R. W. Farmer, Engineer, Transmission & Right of Way Division, Québec Hydro-Electric Commission², wrote to D. J. Allan, Superintendent, Reserves and Trusts, Indian Affairs, asking for an extension of the right to maintain the line for another two or three years:

...
As you are aware the Commission is at present maintaining a temporary "H" frame wood pole 110 kv. Transmission line on the Reserve at the location shown lettered "B", "G", "F", "K", on the enclosed Drawing T.10036 and shown in detail on drawing S-10116. This line was constructed and maintained by virtue of Order in Council P.C. 4576, dated June 4th, 1943. The right to maintain this line was to be in force for the duration of the war and one year thereafter and will therefore terminate in August this year. Due to the fact that we have no alternative line into Montreal in case of damage to the existing River Crossing, we are desirous of maintaining this temporary line until such time as the abovementioned proposed new line is completed and put into operation, which should be within two or three years.³

[Document No. 17]

17. D. J. Allan's reply to Farmer is dated May 11, 1946:

...
Regarding the temporary right of way authorized under Order in Council PC 4576 (1943), the authority given by this Order in Council will expire at the end of one year after the war. The compensation which was paid was based on occupation for that short term. It is suggested that you submit a proposal to have the term extended to a fixed date on payment of such additional compensation as may be acceptable to the owners. Mr. Taggart will be able to advise you of the names of the present owners of the holdings affected by this line (your drawing No. S-10116).

[Document No. 18]

18. A letter written on June 17, 1946, on behalf of D. J. Allan to Farmer indicated that the temporary line might be used in conjunction with another line to meet Hydro-Québec's needs so that they would not need to obtain the new right-of-way they were seeking⁴:

...
It has been suggested that the 192 foot right of way granted under PC 1141 (1930) affords accommodation for the additional line now required and that the temporary line authorized under PC 4567 [sic] (1943) might be kept in use for a definite long term, say 30 years. ...

[Document No. 20]

Farmer responded with an explanation of why they had already rejected this option, stating that "The existing temporary right of way under P.C. 4567 [sic] parallels important telegraph

² The Quebec Hydro-Electric Commission (also called Hydro-Québec) was founded on 14 April 1944. In response to public criticism of poor service and high rates, the Québec government expropriated Montreal Light, Heat and Power Consolidated and its subsidiary, Beauharnois Light, Heat and Power Co, and empowered the Québec Hydro-Electric Commission to administer these 2 companies. [Source: The Canadian Encyclopedia Plus Copyright © 1995 McClelland & Stewart Inc. on CD ROM.]

³ Reference is being made here to another proposed line crossing Caughnawaga lands for which the Commission was also applying. This is explained earlier in Farmer's letter.

⁴ Refer to footnote 3.

lines of the Canadian Pacific Railway and main Telephone cables of the Bell Telephone Co.; both these companies would naturally have very strong objections to the installation of a permanent transmission line in such a location." [Document No. 21.]

19. Indian Affairs' Solicitor W. W. Cory provided D. J. Allan with a legal opinion on July 30, 1946, that the expiry date of the rights granted by O.C.P.C. 4576 would be exactly one year after the formal declaration of the end of the war. [Document No. 22.]
20. R. W. Farmer, Engineer, Transmission & Right of Way, Québec Hydro-Electric Commission, wrote a lengthy communication to C. H. Taggart, Commissioner, Department of Indian Affairs, on August 31, 1946:

Pursuant to my recent agreement with you, I am forwarding herewith Drawing S-10116 showing colored in red the temporary right-of-way granted to us for the construction and operation of a transmission line, by virtue of Order-in-Council P.C. 4576, dated June 4th 1943, copy of which is attached.

The Commission now wishes to renew the rights granted at that time, for a further period of approximately 3 years i.e. to December 31st 1949, by which date a permanent line, to be constructed along the route now being surveyed through the Reserve, should be completed.

Calculations of payments made to owners of land along the right-of-way under the above mentioned Order-in-Council were based on the following:

\$30.00 per acre for land.
 25.00 " " additional for bush and trees removed.
 10.00 " double pole structure without guys and anchors.
 15.00 " double pole structure with guys and anchors.

On estimating proposed payments for renewal, the same figures have been used with the exception of payments for bush and trees as they have been already cut.

Appended are list of owners with proposed awards for renewal:-

<u>(1) JOHN BEAUVAIS - Lot 231</u>		
1.30 acres at \$30.00 =	\$39.00	
1 structure at 10.00	10.00	
1 structure at 15.00	15.00	\$64.00
<u>(2) JOHN JACCO-Lots 224, 224-A & 220.</u>		
4.11 acres at \$30.00 =	123.30	
4 structures at 10.00 =	40.00	163.30
<u>(3) WILLIAM PERRAS - Lot 219.</u>		
0.06 acres at \$30.00 =	1.80	2.97 ⁵
		1.80
<u>(4) EST MATHIAS LEBORGNE - Lot 215</u>		
2.16 acres at \$30.00 =	64.80	
2 structures at 10.00 =	20.00	84.80
<u>(5) EST FRANK CROSS - Lot 214</u>		
1.07 acres at \$30.00 =	32.10	
1 structure at 10.00 =	10.00	
1 " at 15.00 =	15.00	57.10
<u>(6) DEPT. OF INDIAN AFFAIRS-The Comm.</u>		
2.94 acres at \$30.00 =	88.20	
3 structures at 10.00 =	30.00	118.20
TOTAL =		489.20
		490.37

⁵ Meant to replace the amount below of \$1.80.

As arranged, would you kindly convey these offers to the parties concerned so that a settlement may be concluded as soon as possible. We will be pleased to hear from you on this matter at your earliest convenience.

[Document No. 23]

21. On September 20, 1946, Indian Affairs Commissioner C. H. Taggart acknowledged receipt of R. W. Farmer's letter and stated that the "proposals in the matter of compensation seem to the writer to be quite fair and reasonable" and had been communicated to the locatees. Also, Agent Brisebois had signed on behalf of the Band and the Leborgne and Cross estates:⁶

...
For the Band - Common Land, and for the Estates of Louis & Mathias Leborgne, and that of Frank Cross, in his capacity of Indian Agent and administrator of the Estates, Mr. Brisebois, on behalf of the Band and for the heirs, and for their benefit has officially accepted the offer.

[Document No. 27]

22. The document signed by Brisebois "on behalf of the Indian Band of Caughnawaga" accepted \$118.20 for the common lands crossed by the temporary transmission line. It is dated September 11, 1946:

On behalf of the Indian Band at Caughnawaga, and in my capacity as the duly appointed Indian Agent, I hereby accept for the benefit of the Band, the offer of Compensation as outlined in your letter dated August 31st, 1946 - signed by R. W. Farmer, namely

For Common Land presently used for the existing temporary Transmission Line for a period of three years from the official date of the "closing of the World War II., and one year after" as specified in the Order in Council.

2.94 acres at \$30.00 -	\$88.20
3 Structures at \$10.00 -	<u>\$30.00</u>
	\$118.20

Frs. Brisebois
Frs. Brisebois
Indian Agent.

[Document No. 26]

23. Brisebois had signed on behalf of the Estate of Louis and Mathias Leborgne on September 20, 1946:

On behalf of the Estate of Louis Leborgne and of Mathias Leborgne, both deceased holders of the Indian Right, title and interest in Reserve Lot 215, Caughnawaga Indian Reserve, and in my duly appointed capacity of Administrator of the above mentioned Estates, I hereby accept for and in behalf and for their benefit of the heirs of said Estates, the offer of Compensation as outlined in your letter dated August 31st, 1946 and signed by W. R. [sic R. W.] Farmer - namely,

For 2.16 acres of Lot 215 at \$30.0 -	\$64.80
2 Structures at \$10.00 -	<u>20.00</u>
	\$84.80

⁶ It is not clear whether the Indian Agent had the authority to act on behalf of these estates. (The 1947 instructions to Indian Agents set out guidelines for agents to follow but there is nothing to indicate that they had authority to act for estates.) [Document No. 37.] According to Sec. 28 of the 1927 Indian Act, the Superintendent General could appoint person(s) to administer Indian estates; nothing was found on the files searched in connection with this transmission line indicating that this authority had been delegated to Agent Brisebois. [This section of the act is cited in Appendix A at the end of this report.]

for use for a further period of three years from the official date for closing of World War II, and one year thereafter as specified in the Order in Council.

Frs. Brisebois
Frs. Brisebois
Indian Agent.

[Document No. 28]

24. Brisebois' signed acceptance on behalf of the Frank Cross estate was the same as the above quoted document, although the parcel of land involved was described as:

...		
1.07 acres of Lot 214 at \$30.00 -		\$32.10
1 Structure at \$10.00 -		10.00
1 " " 15.00 -		<u>15.00</u>
		\$57.10
...		

[Document No. 29]

25. The agreement signed by locatee John Jacco on his own behalf reads:

I, the undersigned John Jacco holder of Indian right, title and interest in Reserve Lot No. _____ [left blank] Caughnawaga Indian Reserve, across which there has been maintained for the past three years, terminating one year after the close of World War II., an emergency Transmission Line, by the Montreal Light, Heat & Power Co. under the authority of P.C. 4576 - 4th June, 1943, hereby agreed to accept the sum of One hundred and sixty three 30/100 dollars in full compensation for a further renewal of the right previously granted.

This acceptance is in accordance with the Indian Agent's letter dated September 20th, 1946.

Sgd John Jacco

Sgd C. C. Taggart
Witness
Sgd. F. Brisebois Indian Agent
Witness

The September 20 letter from the Indian Agent to Jacco explained the rates that compensation was being paid at and indicated that arrangements for payment would be made as soon as Jacco signed the above agreement. [Document No. 24.]

The agreements signed by William Perras and John Beauvais and the letters to them from Indian Agent Brisebois do not differ from those sent to John Jacco (except, of course, with regard to the compensation amounts and properties involved). [Documents Nos. 25 and 30.]

26. On October 29, 1946, Taggart forwarded copies of the acceptances of Hydro-Québec's compensation offers to the Director of Indian Affairs. He stated that the Commission would be issuing a cheque for \$490.37. He noted that Brisebois had signed on behalf of the two estates involved and on behalf of the Band, stating that the Band had intentionally not been consulted:

...
Mr. Indian Agent Brisebois has signed as Administrator for the two Estates Leborgne and Cross; and also on behalf of the Band, rather than raise the

usual unreasonable uproar and opposition sure to be voiced if the present Council is in any way consulted.

[Document No. 32]

27. Order-in-Council P.C. 4605, passed November 7, 1946, authorized the Québec Hydro-Electric Commission's continued use of the right-of-way for the temporary power transmission line through Caughnawaga until December 31, 1949, in consideration of additional compensation of \$490.37.

WHEREAS by Order in Council P.C. 4576 dated June 4th, 1943, authority was given under section 48 of the Indian Act to Montreal Light, Heat and Power Consolidated to enter on Caughnawaga Indian Reserve for the duration of the war and one year thereafter;

AND WHEREAS Quebec Hydro Electric Commission has succeeded to the rights of Montreal Light, Heat and Power Consolidated and the said Commission has agreed with the owners of individual Indian holdings on the Reserve for the continuance of the right of way until December 31st, 1949, in consideration of an additional compensation amounting to Four hundred and ninety dollars and thirty-seven cents (\$490.37).

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Mines and Resources, is pleased to authorize and doth hereby authorize Quebec Hydro Electric Commission to continue the use of its temporary power transmission line in the said Indian Reserve until December 31st, 1949.

[Document No. 33]

28. Receipt of the cheque for \$490.37 from the Commission was acknowledged by D. J. Allan on January 31, 1947. It was noted that cheques had been sent to Perras, Jacco and Beauvais and that the accounts of the two estates and the Band had been credited with the other amounts. [Document No. 35.]
29. On March 21, 1947, R. W. Farmer informed Commissioner C. H. Taggart that Hydro-Québec had decided to connect the transmission line running on their 192 foot right-of-way (granted in 1930) with the temporary line authorized by O.C.P.C. 4576. [Document No. 36.]

PLICATION FOR A FURTHER EXTENSION OF TWO YEARS, 1949-1950

30. On November 14, 1949, R. W. MacGregor, Joint Secretary, Hydro-Québec, applied to the Director of Indian Affairs for a further extension of the right to maintain the temporary transmission line.

By Federal Orders-in-Council Nos. 4576 dated November 4th, 1943 and 4605 dated November 7th, 1946, Montreal Light, Heat & Power Consolidated (Quebec Hydro-Electric Commission, successors by virtue of Quebec Statute 8 George VI, Chapter 22) was permitted under emergency conditions due to World War II to construct and maintain over certain lands of the Caughnawaga Indian Reserve a temporary 110-kv wood-pole electric transmission line to assure the continuity of power supply to the City of Montreal.

The permission accorded under the said Orders-in-Council expires December 31st, 1949, and although present plans of the Commission provide for the construction of a second permanent river crossing some distance downstream from the Mercier Bridge (which will ultimately permit of the said temporary line being removed) it is not anticipated that this permanent line will be ready for operation until some time in the year 1951; hence, the aforesaid temporary line must remain in service until the second permanent river-crossing is ready for operation.

We accordingly hereby make application for approval by Order-in-Council of the right and privilege of maintaining until December 31st, 1951, the said temporary 110-kv transmission line through the Caughnawaga Indian Reserve.

[Document No. 38]

31. D. J. Allan, Superintendent, Reserves and Trusts, replied to MacGregor on November 30, 1949. He recommended that the matter of additional compensation be taken up with Indian Superintendent Frs. Brisebois at Caughnawaga. [Document No. 39.]
32. Several months later, on April 12, 1950, MacGregor advised Indian Affairs that the locatees affected by the extension of the term for the transmission line had agreed to compensation figures.

... we have now received acceptance from the several Indians over whose holdings the existing line was constructed, covering additional compensation proposed to be paid them for the privilege of extending the existing rights to December 31st, 1951.

One copy of each of the signed agreements with the respective Indians is attached hereto⁷, as follows:

<u>Name</u>	<u>Holding</u>	<u>Amount</u>
Frank Leafhollow	231	\$42.67
John Jacco	220, 224, 224A	108.87
William Perras	219	1.98
Mr. & Mrs. Chester Dailleboust	215	56.53
Estate Frank Cross	214	38.06
Councillors of Indian Band	The Common	78.80

Cheque in the total amount of \$326.91, payable to the order of the Receiver General of Canada, is enclosed.

⁷ No copies of these agreements could be found on the Indian Affairs file dealing with this transaction. According to a letter from Mrs. Dailleboust, however, she did sign an agreement in January 1950.

It is understood you will prepare a submission to the Governor-in-Council for the requisite order granting the permission requested and in due course will allocate the payments to the respective Indians concerned.

...

[Document No. 40]

33. On May 9, 1950, Order-in-Council P.C. 2317 authorized the Hydro-Québec to continue to use its temporary transmission line until December 31, 1951. The text of the Order-in-Council referred to the two previous orders P.C. 4576 and 4605 and stated:

...

That the said Quebec Hydro Electric Commission has applied for a further extension of the use of the said line until December 31st, 1951, and has arranged settlements with individual Indian owners and the Council of the Caughnawaga Indian Band and has paid to the Indian Affairs Branch the sum of \$326.91, being the total amount of the said settlements.

The Committee, therefore, on the recommendation of the Minister of Citizenship and Immigration, advise that authority be granted to Quebec Hydro Electric Commission to continue the use of its temporary transmission line in the Caughnawaga Indian Reserve until December 31st, 1951.

[Document No. 41]

34. On May 17, D. J. Allan informed Superintendent Brisebois that the cheque for \$326.91 had been received. Of that, \$78.80 had been retained in the Band fund for the Common lands. The sum of \$38.06 was credited to the estate of Frank Cross. He forwarded cheques for the remainder of the compensation to be issued to the locatees. [Document No. 42.]

APPLICATION FOR A PERPETUAL SERVITUDE AND THE EXPROPRIATION OF CAUGHNAWAGA LANDS FOR THE ST. LAWRENCE SEAWAY, 1951-1995

35. On September 21, 1951, R. W. Farmer, Transmission Engineer, Engineering Design Division of Hydro-Québec, advised D. J. Allan that the commission wished to obtain "a perpetual servitude" for the temporary transmission line.

By Order-in-Council P.C. 4576 of June the 4th, 1943, authority was given to Montreal Light, Heat & Power Consolidated to construct and maintain a temporary transmission line through the Caughnawaga Indian Reserve.

By Order-in-Council P.C. 4605 of November the 7th, 1946, the right to the continued use of the said transmission line was granted to Hydro Quebec Commission (Successors to Montreal Light, Heat & Power Cons.) for a further term until December the 31st, 1949.

By Order-in-Council P.C. 2317 of May the 9th, 1950, this right was further extended until December the 31st, 1951.

The Quebec Hydro Electric Commission would now like to obtain a perpetual servitude covering the right to maintain and operate this transmission line.

On the basis of the procedure followed in the past, I presume it will be in order for us to enter into agreements with the individual owners concerned with regard to the amount of compensation to be paid and then make application for an Order-in-Council approving the granting of such a servitude.

Would you kindly advise me if it is in order for us to proceed in this manner.

[Document No. 44]

36. Allan replied to Farmer on September 27th explaining the procedure the Commission should follow:

I am in receipt of your letter dated September 21st, 1951, and it is noted that you will require an easement for your power line across this reserve in perpetuity. The present permission to maintain this power line expires December 31st, 1951.

For the purpose of granting an easement of this nature, we will require a plan of survey signed by either a Dominion or Quebec Land Surveyor. The plan is to consist of an original tracing, with at least [sic] three prints. In addition, agreements will have to be entered into with the individual Indian owners whose lands are affected, in the same manner as was adopted in connection with the interim grants. We will also require a Resolution from the Band Council approving the granting of such an easement, for so long as the land may be required for that purpose.

It would appear, therefore, that you should, first of all, have the survey made and the necessary plan prepared, and once the property can be definitely identified, agreements should be entered into with the individual Indians, as to the amount of compensation they are prepared to accept. The securing of the Resolution from the Band Council will be taken care of through our Superintendent, Mr. Frs. Brisebois.

A copy of this letter is going forward to him for his information.

[Document No. 45]

37. On January 15, 1952, Marguerite Diabo (aka Dailleboust), co-owner of a parcel over which the Commission wanted a "perpetual servitude", wrote a letter to the Minister of Indian Affairs. She indicated that the Commission had forwarded her husband, Chester, a form

asking for a complete surrender of their property. She stated that in January of 1950 they had signed an agreement regarding the extension of the rights to maintain the temporary line. When the agent had forwarded those forms, he had indicated that this was to be the final extension of rights to maintain the line and that the poles would be removed in the summer of 1951. [Document No. 47.]

38. Jack H. Leech, Manager, Real Estate and Valuation Department, Hydro-Québec, wrote a letter to Chester Dailleboust on January 24, 1952, asking to be informed whether the sum of \$250 would be accepted as compensation.

We refer you to our letter of December 20 last, whereby this Commission requested a perpetual servitude in connection with the right-of-way required for that section of the Mercier Bridge Tap Line located across holding No. 215.

It will be appreciated if you will inform the writer at your earliest convenience as to your acceptance of our offer for the sum of \$250.00 as compensation for the requisite rights, or return, duly completed, one copy of the option form which we previously forwarded you.

In the case of your refusal to comply with our request, this Commission will be obliged to ask the Department of Mines and Resources Indian Affairs Branch to arbitrate the settlement in question.

[Document No. 48]

39. The above letter was forwarded to the Minister of Indian Affairs by Marguerite Diabo on January 30, 1952, with this inquiry:

...
The contract form from the Hydro-Electric, contains nothing whether they propose to acquire the right-of-way on our property, only mentions requirement needed. Should we consent, under these conditions they could place the power lines anywhere and make our land value useless.

As we are waiting to hear from you, we did not make any reply to this request of the Commission.

Must we comply to their request and why?
Must we accept vague proposed lines on property?
Must we accept offer as dictated?

[Document No. 49]

40. The Minister of Indian Affairs replied to Diabo's letters on February 9, 1952. It is quoted here almost in its entirety as it provides a lengthy and rather interesting explanation of the Indian Affairs Branch's policy and procedure concerning the expropriation of Indian lands.

... I believe an explanation of the intent and operation of Section 35 of the Indian Act⁸ and of the circumstances surrounding the forwarding of the compensation agreement to your husband by the Quebec Hydro-Electric Commission will be useful to you.

In 1943, Montreal Light, Heat and Power Company applied for permission to construct a temporary wood pole transmission line across part of Caughnawaga Indian Reserve to provide a spare line to Montreal by way of the Mercier Bridge in case the existing high tower crossing should be damaged. As you undoubtedly know, the wood pole line tapped the main steel tower line south-east of the Reserve and connected it with a line

⁸ Said section has been reproduced in Appendix A at the end of this report for the convenience of the reader.

crossing the river on the Mercier Bridge. As the Company reached agreements with the Band Council and with the various individuals whose holdings would be affected by the line, under Section 48 of the Indian Act, Chapter 98, R.S. 1927, the Governor in Council authorized the said company to construct and maintain the line for the duration of the war and one year thereafter.

In 1946 the Quebec Hydro-Electric Commission, the successors to the Montreal Light, Heat and Power Company, asked for a three-year extension of the right to maintain the temporary pole line, and as all interested parties approved the extension on the terms offered by the Commission, the Governor in Council authorized the continued use of the line until December 31st, 1949.

In 1949, a further two-year extension was requested by the Commission, and again, following agreements as to compensation being reached with all interested parties, the Governor in Council approved the continued use of the line until December 31st, 1951. It is noted that this last extension was approved by your husband and yourself.

In September 1951, the said Commission advised the Indian Affairs Branch it would like to maintain the line permanently, and enquired whether it could approach the individual owners of the lands affected to settle the compensation to be paid for the right to maintain the line across their property on a permanent basis. The Commission was given permission to do so, and your letters are the first word we have had on the matter since then.

Section 35 of the present Indian Act provides that if a municipal or local authority or corporation is authorized by statute to take lands or an interest therein without the consent of the owner, such power may be exercised as regards Indian Reserve lands or any interest therein only with the consent of the Governor in Council, and subject to any terms he may prescribe. The right to take lands without the consent of the owner is only conferred by statute on authorities or corporations whose operations are in the public interest, and may therefore be said to take precedence over private interests. Provincial power commissions come within such category, and it would be extremely difficult for the Governor in Council to justify refusing the Quebec Hydro-Electric Commission application to have a permanent pole line across the Reserve at the site proposed, when the Commission has previously been given power line rights elsewhere on the Reserve and requires the new privilege to supply the ever increasing demands to the City of Montreal and vicinity.

While for the foregoing reason, it is doubtful that the Governor in Council would refuse an application from the Commission, it nevertheless does not follow that you must sign the compensation agreement tendered by the Commission. Practice in matters of this kind has been well established, and is that we advise the applicant for power line rights to negotiate with the Indian owners of the lands to be affected, on the rate of compensation to be paid. If all owners reach agreement with the applicant, then the application for the rights can be considered by the Governor in Council on its merits, and either approved or refused. If the applicant fails to reach agreement with any of the individuals concerned, it is within the discretion of the Governor in Council to grant the rights applied for, and direct how the dispute over compensation shall be determined. Customarily this would be done by arbitration under the provisions of the appropriate Provincial statute, - in the Province of Quebec, the Quebec Provincial Electricity Board.

In the light of the foregoing, it will be apparent that in its letter to you dated January 24th, the Commission was not attempting to coerce you into accepting its offer of compensation, but was merely following the quite normal practice in such cases of pointing out that if you would not accept the amount offered, the Commission would seek permission from the Governor in Council for the grant of the rights, leaving the question of compensation to be determined at a later date by arbitration.

You conclude your letter of January 30th by asking three questions which may be answered as follows.

If by complying with "their request" you mean permit the Commission to acquire power line rights across your property, the answer is you need not, but such refusal does not mean the company cannot secure the rights; for under Section 35 of the Indian Act, it is within the power of the Governor in Council to grant power line rights across Indian Reserve property despite the opposition of any owner of lands affected. In considering an application which was opposed by any land owners, the Governor in Council would of course take cognizance of the objections presented by the property owners.

The property owner is of course entitled to be advised of the exact location of any proposed line crossing his property, but I do not believe there is any problem in this case, for the Commission is merely applying for the continuance of the line that has been in existence since 1943.

As explained above, you need not accept the offer made to you, and may bargain with the Commission if you wish in an endeavour to secure a better settlement. However, should the Commission refuse to increase its offer and its application for pole line rights under Section 35 be approved by the Governor in Council, then the compensation to be paid to you would probably be left for determination by the Quebec Provincial Electricity Board.

In conclusion, may I point out that the Commission is not applying to purchase any part of the property on the Reserve. The rights desired are only those of erecting certain poles on your land, stringing wires over it, and crossing it from time to time to service the line, and under such circumstances, your suggestion that the Commission's offer is low because three acres of Reserve property sold for \$1,000 some years ago, is hardly relevant as in the case of a sale, the owner loses all use of the land whereas in the present case, you have the continued use of the land subject only to the inconvenience caused by the line crossing the same.

[Document No. 51]

41. On February 9, 1952, the Caughnawaga Band Council passed Resolution No. 3230 approving the grant of an easement to the Hydro Commission:

Proposed by John Jacco, seconded by Peter Dove, that after due consideration, the Council has decided to grant an easement of approximately 1,865 feet in length, by 751 [sic] feet in width, running on Eastern section, over culvert and the Provincial New York Highway, from the Mercier Bridge, to Reserve Lot #214, To:- The Quebec Hydro Commission, for a cash settlement of Two Hundred and Forty-Two (\$242.00) dollars, as a perpetual easement exempt from all encumbrances, and charges in favour of the said Commission, for the use of the said Common Land, as per letter File No. 5/31--3-3-1 (R.S.) dated September 27th, 1951 and the Hydro Quebec Commission's reply, copy hereby enclosed.

[Document No. 50]

42. On February 26, 1952, D. J. Allan advised R. W. Farmer, Hydro-Québec, of the Caughnawaga Band Council's resolution and stated that Indian Affairs would proceed with obtaining an Order-in-Council and granting the easement once consent of the individual land owners was given and survey plans were forwarded. [Document No. 52.]
43. On March 6, 1952, Marguerite Diabo informed Jack Leech of the Hydro Commission that she and her husband would not accept the offer of \$250.00. [Document No. 53.]
44. B. Lacasse, Joint Secretary of the Hydro Commission, forwarded several documents to the Indian Affairs Branch:

...
1. Original tracing, on linen, and three prints of a Plan of Survey, duly signed by a Quebec Land Surveyor;

2. Agreements entered into with the following Indian owners for the amounts indicated:

a) The Caughnawaga Indian Elected Council	\$242.00
b) Estate Frank Cross	170.00
c) John Jacco	500.00
d) William Perras	5.00
e) Frank Leafhollow	160.00
f) Letter from Chester Dailleboust (Diabo)	
	<u>\$1,077.00</u>

3. Hydro-Quebec cheque in the amount of \$1,077.00 to the order of "The Receiver General of Canada".

I believe you now have all papers necessary to proceed with the granting of the easement applied for by Hydro-Quebec.

[Document No. 54]

45. Acknowledgement of Lacasse's letter was made by the Acting Superintendent of Reserves and Trusts on May 12, 1952. He reported that the survey plan had been forwarded to the Surveyor General for inspection. With regard to Chester Dailleboust and his wife's refusal to agree to the compensation offered, he stated:

...
Your letter is not clear as to whether you wish authority to exercise your rights of expropriation with regard to the property owned by Chester Dailleboust [sic] (Diabo) and his wife, and arbitrate the amount of the compensation for the use of the land required by you; or whether you are not now asking for a permanent easement across this parcel of land.

The Acting Superintendent asked for clarification on whether the Dailleboust's parcel was required. [Document No. 55.]

46. Lacasse in turn replied on the 20th of June suggesting the following procedure to conclude the transaction:

...
That you secure from Chester Dailleboust (Diabo) in favour of Hydro-Quebec a right-of-way on Lot 215 of the Caughnawaga Reserve, for which this Commission is prepared to pay Mr. Dailleboust the sum of \$250, detailed as follows:

4 poles	\$60.00
1265 lineal feet	<u>199.75</u>
	\$249.75

In meantime, in view of the fact that we have had visits from several of the other indians [sic] involved requesting that we make payment to them of the amounts agreed upon, as detailed in my letter of May 8th, 1952, we should appreciate it if you would make payment of the indemnities granted in these cases.

[Document No. 56]

47. D. Vogt, Acting Superintendent, Reserves and Trusts, informed B. Lacasse that Hydro-Québec's application would not be dealt with until they had the consent of the Daillebousts:

...
Your Commission has applied for a power line right of way across this Indian Reserve, and one of the Indians whose land is affected has not consented thereto, and we are not able to deal with your application until all the Indians whose land is affected have given their consent. In other words, at this point, your application does not conform with our requirements in full.

If you will read Section 35 of The Indian Act, of which I think you have a copy, you will note that the Governor in Council may give you authority to exercise your right to take or use lands on an Indian Reserve without the consent of the owner. Now we have one owner who does not give his consent, and all we can do at this point is to authorize you to use your rights of expropriation in connection with this one individual, and with regard to those who did consent, we are in a position under sub-section 3 of the same section to provide you with the necessary easement.

We want to know at this time whether you are willing to divide your application into two parts so that we can deal with those who have consented separately, and thus pay to them the compensation agreed to, without further delay. This office, like your own, has been pressed for payment of the amounts involved where agreements have been reached; and we are in no position to make payment until you agree that we segregate the section of the right of way passing through the Dialleboust [sic] (Diabo) property from the rest of your application. It appears that the Diabo compensation will have to be arbitrated.

In your letter under reply you asked that we secure from Chester Diabo the required consent, and to do this we can only say that it is not our practice to complete negotiations of this kind, and this must be done by the applicant himself. Will you therefore please advise by return mail whether it will be in order to pay to the individual Indians from whom you have an agreement in writing, compensation agreed upon, and that you will only hold us responsible at this stage for the granting of an easement for a right of way with respect to the property where consents have been obtained. At the same time, we will take the necessary Submissions to the Governor in Council for authority to exercise your expropriation rights insofar as the Diabo property is concerned which, if consented to, will also provide you with authority to maintain your power line on this particular property, but the compensation will have to be settled by a Board of Arbitration in accordance with the law applicable.

[Document No. 57]

48. André Dufresne, Assistant Transmission Engineer, Hydro-Québec, sent a reply to Indian Affairs on July 2, 1952:

In reply to your letter of June 27th, 1952 to our Mr. Bernard Lacasse, Joint Secretary, and further to our telephone conversation of to-day, will you be kind enough to divide our application into two parts:

(1) We are agreeable to dealing with all the Indians who have given their consent separately and authorize you to pay them the compensation agreed to, without further delay.

(2) We would like you to request the Governor-in-Council to authorize the Commission to exercise its expropriation right in so far as Diabo's property is concerned; the compensation for doing so to be settled by a Board of Arbitration in accordance with the law applicable.

...

[Document No. 58]

49. Order-in-Council P.C. 3821, passed August 21, 1952, authorized the grant to Québec Hydro Commission of the power line right-of-way through Caughnawaga lands. It was noted that

Caughnawaga Band Council had recommended the approval of the right-of-way and that all individuals except one had agreed to the amount of compensation (\$1077).

The Committee of the Privy Council have had before them a report dated 1st August, 1952 from the Minister of Citizenship and Immigration, representing:

That Quebec Hydro-Electric Commission, with head office at the City of Montreal, in the Province of Quebec, a corporation empowered by Statute to take or use land or any interest therein without the consent of the owner, has applied for the use of the land hereinafter described for an electric power line right of way, being a portion of Caughnawaga Indian Reserve number fourteen, in the said Province.

That the Director, Indian Affairs, reports that the Band Council of the Caughnawaga Band of Indians has by resolution dated the 9th of February, 1952,⁹ recommended approval of the application and that all the individual Indians whose lands are affected, with the exception of one, have agreed with the Commission as to the amount of compensation therefor, the sum total of which is one thousand and twenty-seven dollars.

The Committee, therefore, on the recommendation of the Minister of Citizenship and Immigration, advise that Your Excellency may be pleased, pursuant to Section 35 of the Indian Act, Chapter 29, Statutes of Canada, 1951,¹⁰ to consent to Quebec Hydro-Electric Commission exercising the aforesaid statutory powers in relation to the said lands and to authorize a grant to the said Commission of an easement for an electric power line right of way with respect to the lands concerning which an agreement has been reached as to compensation, upon payment of the agreed amount and upon such further terms, conditions and provisions as the Minister of Citizenship and Immigration may deem necessary or advisable;

Description

All that portion of Caughnawaga Indian Reserve number fourteen, in the Province of Quebec, required for right of way for a power transmission, being a strip of land seventy-five feet in perpendicular width extending from the Cedars Rapids Transmission line to the right of way for Mercier Bridge as shown on a plan of location recorded in the Indian Affairs survey records at Ottawa, under number F. thirty-five hundred and forty-eight.

[Document No. 59]

CLSR Plan No. F3548, referred to in the above Order-in-Council, is Plan No. 2 in the collection of plans submitted along with this report.

50. Cheques for John Jacco (\$500), William Perras (\$5) and Frank Leafhollow (\$160) were requisitioned on August 28, 1952. [Document No. 60.]
51. In September 1952, J. W. Pickersgill, Acting Superintendent, Reserves and Trusts, Indian Affairs, informed R. W. Farmer, Transmission Engineer, Québec Hydro-Electric Commission, that the easement granted by O.C.P.C. 3821 was restricted to the portion for which compensation had been agreed upon and that it was necessary to conclude an agreement with Chester Diabo.

...
On reading the Order in Council you will note that insofar as the consent under Section 35 of the Act is concerned, it covers the entire right of way of your power line; but insofar as authority for granting an easement is concerned, it is restricted to that portion for which agreements have been reached with the individual Indians. It will therefore now be necessary for

⁹ It should be recalled that the BCR gave permission for the right-of-way through *common* lands only.

¹⁰ Again, this section has been reproduced in Appendix A at the end of this report.

you to either conclude an agreement with Chester Diabo or else have the matter arbitrated in accordance with the laws of the Province of Quebec.

Now that the Governor in Council has provided the necessary consent under Section 35 of the Act, Mr. Diabo may be somewhat easier to deal with. It is therefore suggested that at least an attempt be made to arrive at an agreement.

With regard to your plan of survey, the Surveyor General did not find this plan satisfactory. However, in order that the consent under Section 35 of the Act could be obtained, the plan was recorded as a file plan under number F.3548 ... The Surveyor General will now advise you directly how this plan should be prepared, ...

...

[Document No. 61]

52. In April of 1953, L. L. Brown, Superintendent, Reserves and Trusts, wrote to R. W. Farmer, Transmission Engineer, Québec Hydro-Electric Commission, asking for a progress report on the outstanding agreement with Chester Dailleboust "as to compensation, or in the alternative, arbitration proceedings to settle the amount of compensation." Furthermore, they were still awaiting the submission of a legal plan of survey. [Document No. 62.] Hydro replied that they had not received a reply from Dailleboust and were "therefore proceeding with expropriation." With regard to the plan, they were waiting for instructions from the Surveyor General. [Document No. 63.] A year later, on April 30, 1954, Farmer forwarded a survey plan on linen for submission to the Surveyor General. The matter of arbitration with Chester Dailleboust was being dealt with by the Commission's Real Estate Department from whom Farmer was waiting for a report. [Document No. 64.]
53. Instructions for amendments to the survey plan were issued in August. [Document No. 65.]
54. H. M. Jones, Director of the Indian Affairs Branch, wrote Marguerite Diabo a letter on October 21, 1954, explaining why the arbitration proceedings respecting the compensation she and her husband would receive had not yet commenced. At the end of his letter, Jones made the following comments with regard to the wording of the August 21, 1952, O.C.P.C.:

...
I believe you also suggested that the Order in Council was incorrect in the sense that it recited the Band Council resolution approving the right of way had included your property, whereas it actually referred to Lot 214 only. You were correct in stating that the Council resolution referred to Lot 214 only, but that was all that was required. This Lot was Band property and the Council was only dealing with it. There was no requirement that the Council give a consent to the right of way crossing the property of any individual Indian.

[Document No. 66]

55. L. L. Brown, Superintendent, Reserves and Trusts, wrote to R. W. Farmer on October 26, 1954, asking that the arbitration with regard to the Diabo property be "prosecuted to a final conclusion as speedily as possible." [Document No. 67.]
56. On January 19, 1955, R. W. Farmer notified L. L. Brown that they were unable reach a settlement for the Diabo property "and were about to take expropriation procedures", however:

... work has been recently started at Montreal on the St. Lawrence Seaway Canal and is proceeding in the direction of Caughnawaga which will probably be reached early next summer. The construction of this canal will

undoubtedly affect the right-of-way under discussion and it will almost certainly mean that we will have to relocate our line.

Under the circumstances, we do not feel that we should proceed any further at the present time in connection with the existing right-of-way but rather that we should wait until we are aware of what changes will have to be made.

[Document No. 68]

57. Brown acknowledged Farmer's advisement concerning the impact of the seaway development on the power line right-of-way and agreed that it seemed sensible to leave the expropriation procedures in abeyance. In the meantime, however:

...
... as you have been occupying her property since January 1st, 1952 without paying for the use thereof, we believe that it will be necessary to negotiate an interim agreement for the right to occupy the property pending the completion of the seaway canal, or at least until it is determined just what land will be involved.
... [settle matter as soon as possible] ...

[Document No. 69]

58. Thus, in March 1955, Jack Leech, Manager of the Real Estate and Valuation Department, wrote to Chester Dailleboust to propose an interim agreement:

... in respect of compensation for our existing right-of-way on the aforesaid holding, pending completion of work at Caughnawaga on the St. Lawrence Seaway Canal, or relocation of our line.

Renewal of agreement as from December 31st 1951 until December 31st 1956, in consideration of compensation amounting to \$148.35, including interest, with the privilege of renewal from year to year in payment of annual rental of \$28.76.

...

[Document No. 70]

59. On August 17, 1955, a lease was entered into between Chester and Marguerite Dailleboust (Diabo) and the Québec Hydro-Electric Commission for the portion of the right-of-way crossing over Lot 215. It was for a term of 25 years, being January 1, 1951, and an annual rental of \$56.53. The sum of \$310.95 was payable upon acceptance of the agreement, being rent from January 1, 1951 to December 31, 1955, with 5% interest. [Document No. 71.] The lease was forwarded to Indian Affairs on November 15, 1955. [Document No. 73.]
60. In September of 1955 and February and October of 1956, just over 1350 acres of Caughnawaga land was taken by the St. Lawrence Seaway Authority in order to construct a seaway canal along the south shore of the St. Lawrence River. The right-of-way for the power transmission line under consideration in this report was within the expropriated area. [Documents Nos. 72, 74, 75.]
61. In September of 1966, the Seaway authority transferred back 10,968,901 square feet (about 252 acres) of the expropriated Caughnawaga lands to the Minister of Citizenship and Immigration, Indian Affairs Branch. [Document No. 76.] Another 553.193 acres were transferred to Indian Affairs in October 1976. [Document No. 77.] The lands transferred by

the 1966 and 1976 Orders-in-Council were returned to Caughnawaga Indian Reserve status in October 1978. [Document No. 78.]

The October 1976 and October 1978 Orders-in-Council defined the lands being transferred to reserve status by their SLS lot numbers. It would appear that the SLS lots over which the right-of-way under consideration in this report would have once crossed were numbers 13, 14 and 20. The CLSR plans of these SLS lots (58645 and 58760) do not indicate that Hydro-Québec has any continuing right or interest therein. The location of the SLS lots in question are shown on a sketch map at the beginning of this report.

62. Hydro-Québec stated in July of 1995 that the line had been dismantled and property rights held by Hydro-Québec were cancelled through the expropriation by the SLSA. [Document No. 79.]

APPENDIX A: LEGISLATION

- I. The Indian Act in the 1927 Revised Statutes of Canada (c. 98) consolidated the amendments which had been made concerning the taking of Indian lands for public purposes:

...
48. No portion of any reserve shall be taken for the purpose of any railway, road, public work, or work designed for any public utility without the consent of the Governor in Council, but any company or municipal or local authority having statutory power, either Dominion or provincial, for taking or using lands or any interest in lands without the consent of the owner may, with the consent of the Governor in Council as aforesaid, and subject to the terms and conditions imposed by such consent, exercise such statutory power with respect to any reserve or portion of a reserve.

2. In any such case compensation shall be made therefor to the Indians of the band, and the exercise of such power, and the taking of the lands or interest therein and the determination and payment of the compensation shall, unless otherwise provided by the order in council evidencing the consent of the Governor in Council, be governed by the requirements applicable to the like proceedings by such company, municipal or local authority in ordinary cases.

3. The Superintendent General shall, in any case in which an arbitration is had, name the arbitrator on behalf of the Indians, and shall act for them in any matter relating to the settlement of such compensation.

4. The amount awarded in any case shall be paid to the Minister of Finance for the use of the band of Indians for whose benefit the reserve is held, and for the benefit of any Indian who has improvements taken or injured.

...

[Document No. 1]

- II. The first part of Section 28 of the 1927 Indian Act stated the following regarding the administration of Indian estates:

28. The Superintendent General may appoint a person or persons to administer the estate of any deceased or insane Indian, and may make such general regulations and such orders in particular cases as he deems necessary to secure the satisfactory administration of such estates.
1924, c. 47, s. 2

...

- III. A detailed set of instructions to Indian agents was sent out in September 1933 by Deputy Superintendent General H. W. McGill. This circular gave instructions on reports required in connection with an application for a right-of-way, as follows:

...
69. Surveyors in general, and the engineers of railway companies and other corporations, acting under proper authority, may be allowed to make necessary *surveys* across Indian Reserves; but no work of *construction* is to be allowed until the Indian Agent has been notified by the Department to allow the same to be proceeded with.

70. In the event of application being made to an Agent for rights of way, when notifying the Department to that effect he should, if he has received sufficient information from the applicant, also forward his report and valuations.

71. The following list covers the general phases to be considered when reports are required by the Department on rights of way for railways, roads, power lines, irrigation ditches, telegraph and telephone lines, pipe lines,--

1. Compensation per acre for unimproved land.
2. Compensation per acre for improved land.

3. Compensation per acre due to severance damage.
4. Amount of compensation due to band interest in land.
5. Amount of compensation due to individual Indian's interest in land.
6. Amount of compensation due to individual Indians for other improvements, such as buildings, clearing, fencing, etc.
7. Individual Indian compensation is to be listed giving name of Indian, nature of improvement and amount due. The band is held to have an interest in the holding of the individual Indian. This interest is usually protected by placing to the band account from 5% to 10% of the amount received for the improved land of the individual Indian. The Agent should recommend the percentage to be withheld. The total amount may be credited to the individual on resolution of the Council of the band, accompanied by the Agent's recommendation.
8. Location and nature of crossings.
9. Whether fences should be erected as soon as construction is completed.
10. If easements are to be granted, value of long or permanent easement is considered by the Department to be almost the full value of the land and payment may be demanded (a) by lump payment at a price per acre, (b) by an annual rental, and additional compensation is always demanded for any timber cut on or adjoining the right of way.
11. Annual rental for right to occupy during pleasure of Superintendent General.
12. *Reports* on Rwy. rights-of-way are to consider and cover Clauses 1, 2, 3, 4, 5, 6, 7 and 8.
 - A. On Roads, Clauses 1, 2, 3, 4, 5, 6, 7 and 9.
 - B. On Power Lines, Clauses 4, 5, 7, 10 (a) and (b).
 - C. On Pipe lines, telegraph and telephone lines, Clauses 4, 5, 7 and 11.
 - D. On irrigation ditches, Clauses 1, 2, 3, 4, 5, 6, 7, 8 and 9.
- ...

[Document No. 2]

IV. Section 35 of the 1951 Indian Act (S.C. 1951, c. 29) reads:

35. (1) Where by an Act of the Parliament of Canada or a provincial legislature His Majesty in right of a province, municipal or local authority or a corporation is empowered to take or use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.

(2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection one shall be governed by the statute by which the powers are conferred.

(3) Whenever the Governor in Council has consented to the exercise by a province, authority or corporation of the powers referred to in subsection one, the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of such lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

(4) Any amount that is agreed upon or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to Receiver General of Canada for the use and benefit of the band or for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in subsection one.

[Document No. 43]

REPORT:

**The Expropriation of Kahnawake Territory
for a Hydro Transmission Line by the Canadian Light & Power Company
(Line 4)**

**Prepared by Joan Holmes & Associates, Inc.
for the Mohawk Council of Kahnawake
June 1997**

REPORT:

**THE EXPROPRIATION OF KAHNAWAKE TERRITORY
FOR A HYDRO TRANSMISSION LINE BY THE CANADIAN LIGHT & POWER COMPANY
(LINE 4)**

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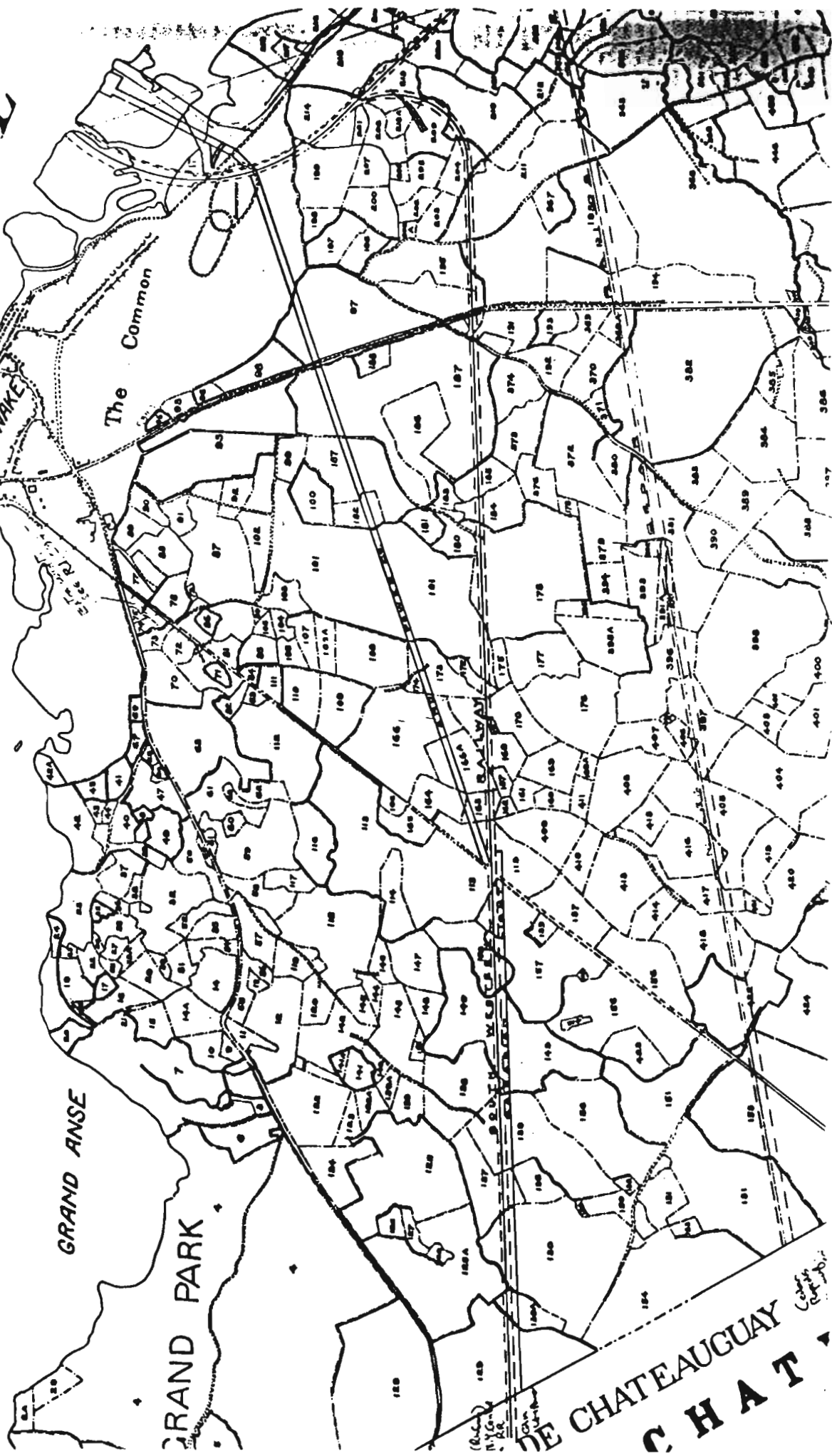
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106 L A K E St. L

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 CHATOU
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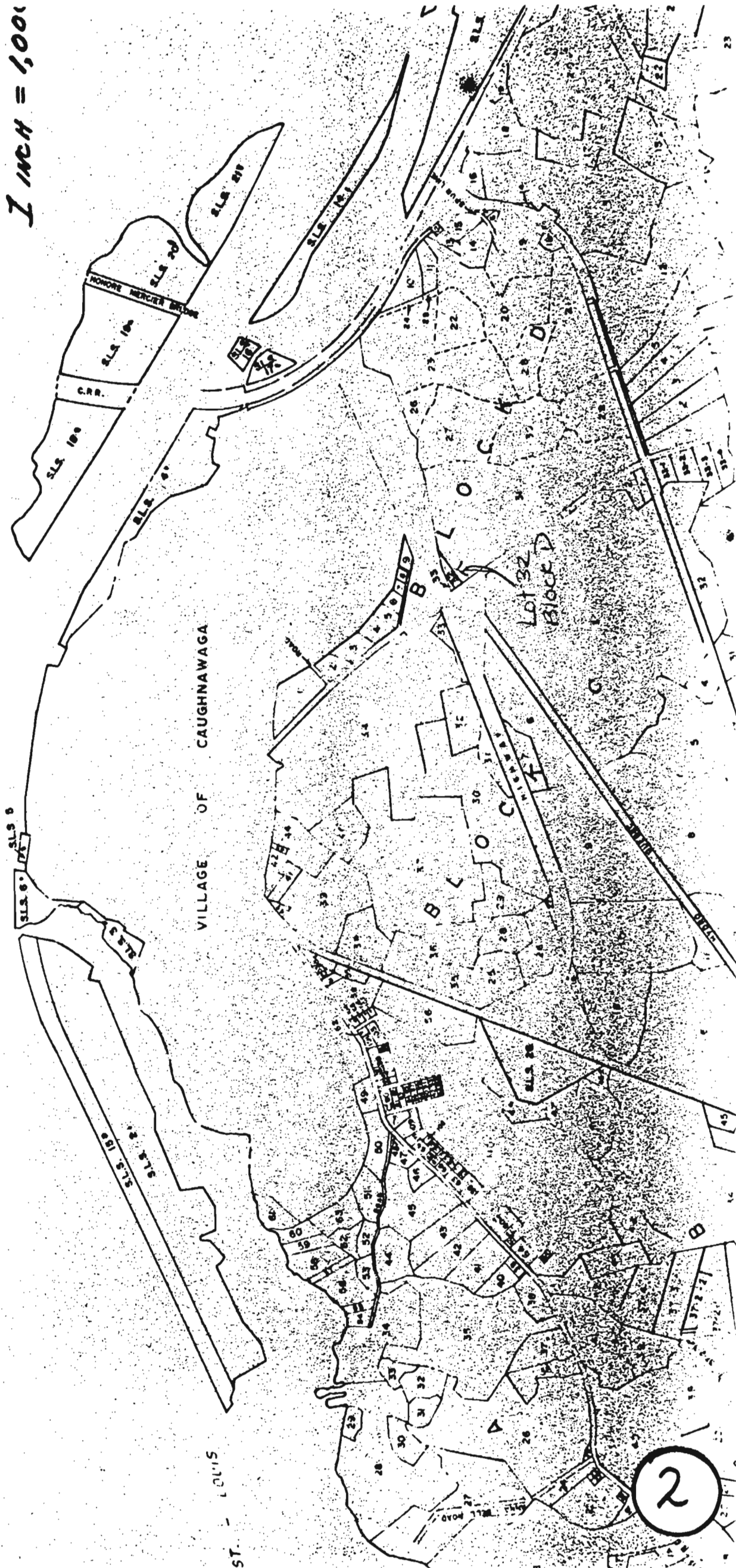
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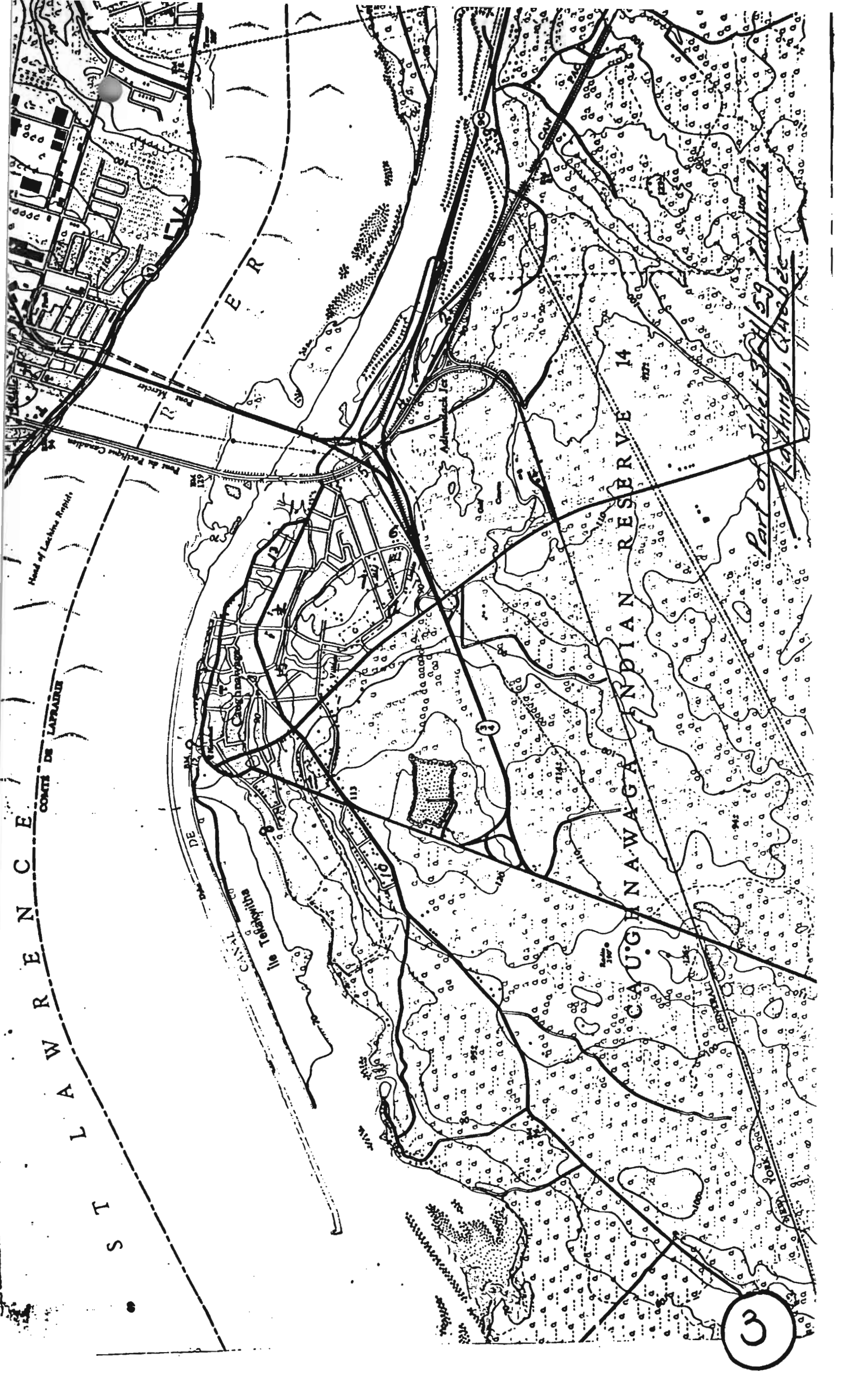


1 INCH = 1,000

2 of

58502





S T L A W R E N C E
C O M T É D E L A P R A I R I E

R I V E R

C O U G H N A W A G A I N D I A N R E S E R V E 1 4

*Part of Report 34/59 Addition to
Kishind, Quebec*

3



CHRONOLOGY OF EVENTS

ABBREVIATIONS:

BL&H	Blair, Lavery and Hale, Legal Counsel acting for DIA
CIQ	Confederation of Indians of Quebec
CL&P	Canadian Light and Power Company
DIA	Department of Indian Affairs
DSGIA	Deputy Superintendent General of Indian Affairs
MCK	Mohawk Council of Kahnawake
OC	Order-in-Council
PC	Privy Council
QLS	Quebec Lands Surveyor
r/w	right-of-way
RSQ	Revised Statutes of Quebec
SGIA	Superintendent General of Indian Affairs

1910

September CL&P applies to Governor General in Council for permission to run a power transmission line across Caughnawaga I.R. 14

1911

- March 30 Application and a plan of proposed course of transmission line conveyed to DIA.
- May 19 Sec. 46 of Indian Act amended by Canadian parliament to read that provincial, municipal and local authorities with federal or provincial statutory powers to expropriate can take Indian lands *with the consent* of the Governor in Council.
- May 29 DIA directs CL&P to deposit plans on tracing linen and states that steps are being taken to obtain OC.
DIA directs Caughnawaga Indian Agent to value properties to be affected by proposed power line r/w and to submit valuation in schedule form; he is also to consult Council in order to determine a value per arpent which should be credited to Band in consideration of Band's communal interests in located properties.
- June 1 SGIA makes submission to PC for OC authorizing acquisition of r/w by CL&P.
- June 5 Band Council resolves that \$750 per arpent should be demanded for 14.89 square arpents of the Caughnawaga common required for line. Stipulated that: "this piece of land of the common that will be expropriated by the Canadian Light and Power Company shall become again the property of the Caughnawaga band at the expiration of the charter of the said company."
- June 7 Indian Agent informs DIA of Band Council's demand for \$750 per arpent, states that Band wants SGIA to set rate per arpent for Band interest, and reports on valuations made. Valuation schedule shows that agent valued 9.06 sq. arp. of common lands at \$400 and 5.83 sq. arp. at \$300 per arpent. Locatees' lands valued anywhere from \$75 to \$300 per sq. arp.
- June 8 OC (PC# 1362) passes. It states: "under the provisions of Section I of 'An Act to Amend the Indian Act,' I George V. authority be given for the acquirement by the said Company of the right-of-way referred to, upon such terms as may be agreed upon." [Referring to May 19 amendment to Sec. 46.]
- June 10 Peter Delisle and Louis F. Jackson given power of attorney for locatees. DSGIA writes to Peter Delisle stating that each Indian property owner is to be consulted in arriving at valuations.

- June 10 CL&P Solicitor informs DSGIA that arbitrators arrived at award of \$7,900¹ "for part of property...agreed upon" and that third arbitrator was to be appointed to deal with balance of property.
- June 13 Minutes of June 5th Band Council meeting forwarded to DIA by Indian Agent.
- June 17 DIA informs CL&P solicitor that DIA has no knowledge of award of arbitrators of \$7,900 referred to in June 10 communication; he states that they have received agent's valuation "but the Department requires the consent of the Indian Council and of the different Indian owners interested before taking any action."
- June 23 DIA meets with CL&P and agrees that they will allow CL&P to enter IR for construction purposes once they have made \$8,000 deposit. DIA receives sum soon thereafter.
- June 24 DIA Inspector J. G. Ramsden instructed by DIA to make new valuation of the r/w; he is to take into account the views of P. J. Delisle and L. F. Jackson, who represent locatees.
- August 29 Ramsden reports to DIA that he made valuations of the located lands and consulted individual locatees, each of whom signed an agreement. Locatees consented to \$5 per acre share of their compensation being credited to Band funds as well as an additional 5% being paid to Delisle and Jackson. Agreements signed are a standardized form which states that the locatee has agreed "to release all my right and title to The Canadian Light and Power Company to that portion of my land to be taken for their right-of-way".
- September Locatees paid and Ramsden requested to supply his valuation report on the common lands. Ramsden replies that CL&P suggested sum of about \$140 per sq. arpent whereas Band wanted \$600-\$700 per sq. arpent. Opines that Band demand unreasonable and suggests that Company be directed to make another offer.
- December CL&P informs DIA that additional small parcel required and that locatee has agreed to sum of \$25 as compensation. DIA accepted said sum on locatee's behalf.
- 1912**
- January 20 DIA Inspector Ramsden reports that CL&P has offered to pay \$2,700 for common lands i.e. about \$181 per sq. arpent. Notes that Chief indicated Band Council would not accept any less than \$400 per sq. arpent. Realty Company called Carrick Company Ltd. quoted \$250 per sq. arpent; Beaudry Realty quoted \$200-\$250 per sq. arpent.
- February 27 CL&P replies to DIA inquiry re highest offer they're prepared to make--\$2,700.
- March 8 Band Council resolves to accept no less than \$300 per sq. arpent (total of \$4,467) and explains why land in question is of particular value to the Band.
- March 26 CL&P asked to either pay \$300 per sq. arpent or name an arbitrator.
- April 4 Indian Agent reports that Band wants Robert Orr of Chateaugay to be their arbitrator.
- April 17 CL&P Solicitor asks DIA to confirm whether arbitration proceedings will take place under Articles 6564 and following of RSQ. DIA replies in the affirmative.
- June 12 S. Ouimet, QLS, prepares technical description of common lands and officially swears that \$2,700 is fair compensation for common lands.
- June 17 Notice served to SGIA by Solicitor of CL&P that they will pay only \$2,700 and that John L. Brodie is their arbitrator.

¹ The sum of \$7,900 is very close to the total valuation of Letourneau if the amount for common lands is excluded (i.e., the amount for the located lands). (Due to errors in Letourneau's valuation it is not possible to determine his exact valuation for the located lands.)

- August Band arbitrator Robert Orr and CL&P arbitrator John Brodie meet; latter suggests that Band obtain legal counsel. "Mayor" of council, Dr. Patton, states that legal counsel not required or wanted.
- September Orr and Brodie appoint a third arbitrator who refuses to accept position.
- 1913**
- April 11 Band Council passes resolution to find out whether common lands paid for yet.
- September 29 Band's arbitrator reports that he and Brodie have been unable to appoint a third arbitrator.
- November 3 CL&P Solicitor advises DIA of amendment to RSQ regarding expropriations. Proceedings must now take place before judge instead of arbitrators.
- November 7 DIA gives firm Blair, Lavery & Hale (BL&H) authority to bring matter of arbitration before a judge.
- 1914**
- February 5 BL&H advises that CL&P solicitor has been away at Quebec Legislature so they have been unable to make progress in arbitration. They recommend that real estate experts be retained in order to present evidence on behalf of band at arbitration hearing. DIA replies that Band should be consulted on matter.
- April 17 Band Council resolves that Indian Agent and Band Council will present evidence.
- April 22 BL&H inform Agent and DIA that Band will surely face defeat if they go before judge without a real estate expert's evidence.
- May 4 Asst. Depy. & Secy. of DIA tells BL&H that CL&P should be approached about making an amicable settlement. Valuator from company should first meet with valuator of DIA for discussion.
- May 8 Band Council resolves that F. M. Jacobs, Chief Councillor, and Dr. Patton will assist W. R. White, Surveyor for DIA, in arriving at agreement with CL&P.
- May 19 W. R. White advises that Band will now accept \$3,316.50 for common lands being \$325 per acre for mainland property (6.42 acres) involved and \$200 per acre for property on island (6.15 acres).² White recommends that CL&P be informed that if they pay the \$3,316.50 an OC will be applied for permitting them to acquire land.
- May 26 DSGIA conveys the valuation to CL&P.
- June 2 BL&H advises that CL&P counter-offered \$3,000; said offer conditional on CL&P receiving "clear title" to property. DIA replies that CL&P can either pay \$3000 with interest or \$3,316.50.
- July 14 BL&H reports that CL&P will pay \$3,316.50 and want a deed prepared.
- July 17 DIA advises BL&H that upon receipt of sum OC will be applied for and then a patent will be issued to CL&P.
- August 4 DIA fills out a sales ledger form for sale of strip of land at Caughnawaga (Sale No. 343). Erroneously noted that all 65.33 sq. arp. were purchased for \$3,316.50, despite the fact that this was only the compensation paid in connection with common lands. A patent reference number assigned to sale but patent does not issue until much later at which time a new reference number is assigned.
- August 22 Asst. Depy. & Secy of DIA tells BL&H that one patent will cover right-of-way through IR outside of commons and an OC would be applied for permitting DIA to sell all of land. However, DIA Surveys Branch marginalia states "No O.C. other than that of 8th June 1911 is necessary."

² This is a total of 12.57 acres or 14.46 sq. arpents. Recall that the property involved was actually 14.89 sq. arpents. Based on these figures the Band wanted about \$282 per sq. arpent for mainland property and approx. \$174 per sq. arpent for island property (average price for all of property therefore about \$229 per sq. arpent).

- September 14 Description for patent prepared by DIA Surveys Branch. States that strip of land is 65.33 sq. arp. in area and 100 ft. wide.
- November Correspondence exchanged between DIA, CL&P and BL&H regarding discovery that portion of Lot 97 under Kanawaki Golf Club lease is within CL&P's transmission line r/w. DIA decides not to issue letters patent until matter resolved. Solicitor of CL&P asserts in a letter that DIA has "guaranteed clear deeds" to company.
- 1925**
August CL&P solicitors inquire whether DIA has executed deed yet; DIA replies that they are waiting for settlement of golf club encroachment problem.
- 1932**
May-July Beauharnois Electric Co. Ltd. applied for and received permission from DIA to construct a power line on the r/w. No further documentation on whether or not any construction was actually undertaken.
- 1933**
January Kanawaki Golf Club and CL&P reach agreement re parcel of land covered by golf club's lease which lies within r/w. Club to withdraw property from lease and then receive lease from CL&P.
- May 4 Letters Patent Ref. No. 22523 issued to CL&P for entire right-of-way containing 65.33 sq. arp., 100 ft. wide. Noted that sum paid was \$3,316.50 (this was sum paid for common lands only; no reference made to additional \$8,854 paid to locatees in 1911).
- December DIA informs CL&P that small parcel of lands covered by patent had already been included in a 1913 patent to CPR. Noted that new corrected patent would have to issue to CL&P but no evidence was found that such action was ever taken.
- 1947**
January 8 Commissioner Taggart of DIA observes in a letter to a Mr. St. Louis, DIA archivist, that patent 22523 "is an absolute alienation of the whole right of way across the Reserve." Also notes that patent states that \$3,316.50 paid for r/w despite fact that more than \$8000 was also paid to locatees.
- 1955-1956** About 1350 acres of IR taken for seaway purposes within which lies portion of CL&P r/w.
- 1966-1978** OCs passed in 1966 and 1976 transfer more than 800 acres taken for seaway purposes back to DIA. Property is returned to reserve status by 1978 OC. Plans of returned lands do not show the r/w of CL&P.
- 1973**
February Head, Land Transactions Section, DIA HQ writes to DIA District Supt., Montreal, re r/w stating that if Hydro Quebec was to relinquish rights as successors to CL&P then any deed for that purpose would have to clearly state that they were relinquishing all rights "purported to have been transferred" by Letters Patent. No additional documentation on this matter was located.
- 1978** Research conducted into small part of r/w (Lot 32 Block D) by Confederation of Indians of Quebec (CIQ). DIA Quebec Region's Regional Supervisor of Lands Records and Registry states that power line no longer in use but towers still standing. Notes that there is no reversionary clause in OC and that any attempt to have lands revert should be initiated by Band and/or CIQ.
- 1995**
July Hydro-Quebec tells MCK that r/w for transmission line is partially used for a 25 kv distribution network.
- 1996**
October Sophie Yale, Notary, Civil Litigation and Real Property Law (Quebec) Section, DIA, writes legal opinion re status of r/w. States that letters patent issued by federal crown could not have conferred right of ownership to CL&P. Said opinion based on fact that a researcher, Ms. Valiquette, was unable to find any evidence th federal crown had any right of ownership over the land to begin with. Also states that no expropriation procedures were registered at local registry office in Laprairie but uncertain as to whether such registration actually required.

**APPLICATION BY THE CANADIAN LIGHT & POWER CO. TO TAKE CAUGHNAWAGA
LANDS FOR A TRANSMISSION LINE, 1910-1911**

1. In September of 1910, the Canadian Light and Power Co., based in Montreal, Quebec, made an application to the Governor General in Council for permission to "to take certain land of the Caughnawaga Indian Reserve" in order to run transmission lines:

The Canadian Light & Power Company, incorporated by the Legislature of the Province of Quebec, under the Act Que. 4, Ed. 7, Chapter 107 and Que. 1, Geo. 5 Chapter 76, hereby respectfully makes application for the consent of His Excellency, The Governor In Council, to take certain land of the Caughnawaga Indian Reserve, in the County of Laprairie, for the purpose of its transmission lines.

The Canadian Light & Power Company requires the lands shown in [sic] the plan produced herewith for the purpose of installing its transmission lines from its works at St. Timothee, in the County of Beauharnois, to the Island and City of Montreal, so as to comply with the terms of the lease passed between His Majesty, the King and William Cassels McIntyre and Edmund Arthur Robert, on the tenth of December, 1907, which said lease has been duly transferred and assigned to the Company.

Under and in virtue of Clause 6 of the aforesaid lease the Company is called upon to furnish to the City of Montreal electrical power for Municipal lighting, when so requested by the said City and the Company could not install its transmission lines from its works at St. Timothee to the City of Montreal without taking certain lands of the aforesaid reserve, as described in the plan filed herewith.

By the Act. Que. 1, George 5, Chapter 76, Section 3, the Company is authorized to expropriate the lands, or right of way, required for the installation of one or more lines for the transmission of electricity through the territory in which it has the right to operate under its Charter.

The Canadian Light & Power Company undertakes to compensate the Indians for the land at Caughnawaga and also undertakes to furnish any guarantee for payment of same, which may be required.

The Canadian Light & Power Company as in duty bound will ever pray that His Excellency, The Governor In Council, may be pleased to grant his consent to the said application, and to consent to the taking possession of the said lands by the company, subject to such terms and conditions as may be imposed in connection therewith.

[Document No. 2]

2. A copy of the above cited application was transmitted to the Department of Indian Affairs on March 30, 1911, along with a plan showing the location of the lands sought by the power company. [Document No. 4.] The plan was deposited at Indian Affairs under the number 1065. [See Plan No. 2.¹]
3. Frank Pedley, the Deputy Superintendent General of the Department of Indian Affairs, forwarded the Canadian Light & Power Company's application to the Department of Justice on April 4, 1911, expressing uncertainty about whether the company had the power to expropriate the lands in question:

... They are of the opinion that although operating under a Provincial Charter they are entitled, under Section 46, of the Indian Act, to cross without the consent of the Indians, but simply under an Order of His Excellency in Council. I have explained to the representatives of the Company that upon

¹ Appendix A at the end of this report contains a listing of the names of proprietors, lot nos., total square arpents to be affected by proposed line. The data is from CLSR Plan 1065.

[Document No. 1]

3. The amount awarded in any case shall be paid to the Minister of Finance for the use of the band of Indians for whose benefit the reserve is held, and for the benefit of any Indian who has improvements taken or injured.

2. The Superintendent General shall, in any case in which an arbitration is had name the arbitrator on behalf of the Indians, and shall act for them in any matter relating to the settlement of such compensation.

The remainder of Sec. 46, which was *not* amended in May 1911, reads:

No portion of any reserve shall be taken for the purposes of any railway, road or public work without the consent of the Governor in Council, and if any act occasioning damage to any reserve is done under the authority of an Act of Parliament or of the legislature of any province, compensation shall be made therefor to the Indians of the band in the same manner as is provided with respect to the lands or rights of other persons.

read:

Before this amendment, this portion of Section 46 (Indian Act, R.S.C. 1906, c. 81) had

[Document No. 10]

...
 46. No portion of any reserve shall be taken for the purpose of any railway, road, public work, or work designed for any public utility without the consent of the Governor in Council, but any company or municipal or local authority having statutory power, either Dominion or provincial, for taking or using lands or any interest in lands without the consent of the owner may with the consent of the Governor in Council as aforesaid, and subject to the terms and conditions imposed by such consent, exercise such statutory power with respect to any reserve or portion of a reserve; and in any such case compensation shall be made therefor to the Indians of the band, and the exercise of such power, and the taking of the lands or interest therein and the determination and payment of the compensation shall, unless otherwise provided by the order in council evidencing the consent of the Governor in Council, be governed by the requirements applicable to the like proceedings by such company, municipal or local authority in ordinary cases.

5. On May 19, 1911, following extensive debate in the House of Commons [see Documents Nos. 6, 8, 9], Section 46 of the Indian Act was amended by An Act to Amend the Indian Act S.C. 1911, c. 14, 1-2 George V:

[Document No. 7]

... I may say that in accordance with the view of this department expressed in several opinions upon similar references, section 46 of the Indian Act does not in itself authorize the taking of Indian reserves or portions of them for the purposes therein mentioned. It provides that they may not be taken without the consent of the Governor-in-Council, and thus imposes a preliminary condition which must be satisfied. The authority to take the land compulsorily must, however, be found elsewhere, and there can be I think no doubt that a local legislature has no power to authorize interference with an Indian reserve.

4. Pedley soon received a legal opinion on the matter from the Deputy Minister of Justice, E. L. Newcombe, written April 12, 1911:

[Document No. 5]

advice the Act has been construed to apply only to Companies operating under Dominion Charters. ...

J. L. Perron of Perron, Taschereau, Rinfret et al, the legal representatives for the Canadian Light & Power Company, sent an inquiry to Deputy Superintendent General Frank Pedley on May 20, 1911, as to whether the application to expropriate Caughnawaga lands was to be considered:

Now that the act amending the Indian Act is in force, might I ask you if you would consider the application made by the Canadian Light and Power Company, to expropriate certain lands belonging to the Indian Reserve of Caughnawaga.

As you are aware, the transmission line of this Company has been delayed on account of their being unable to cross the reserve and every day's delay causes serious loss and damage to the Company.

...

[Document No. 11]

7. Nine days later, J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, wrote this letter to Perron outlining the steps that the power company should take in connection with their application:

I beg to acknowledge the receipt of your letter of the 20th instant and telegram of the 25th instant and confirm the following telegram sent you on the 27th instant

"Steps are being taken to obtain Order in Council. Send plan on tracing linen."

I have to say that applications for any land in an Indian reserve should be accompanied by one plan on tracing linen and two blue prints; it is imperative that the plan on tracing linen and the other blue print be supplied with the least possible delay. The plan on tracing linen should be prepared with as little color on it as possible in order that blue prints may be made from it in the future when required. I have also to request that the bearings be noted on the plan and sufficient measurements in order that your proposed Right of Way may be correctly plotted on the plan of the reserve.

[Document No. 12]

8. McLean forwarded a copy of the blue print plan showing the right-of-way required by the Canadian Light & Power Company to the Caughnawaga Assistant Indian Agent, Lorenzo Letourneau, on the same day, with the following directives:

... I have to request you to be good enough to make the necessary valuations as soon as possible.

You will please consult the Indian Council and each Indian whose land may be affected, and endeavour to have their concurrence in such reasonable valuations as you may arrive at.

All lands not located (or owned) by an Indian belong to the band and their full value will be credited to the general funds of the band.

The band has also a small interest in the lands owned by each individual. You with the assistance of the Indian Council should arrive at the rate per arpent of these lands which should be credited to the band; the remainder of each amount of your valuation of the land, improvements and damages will be paid to the Indian owners.

Please draw up your valuations in the following Schedule form,-

Name.	No. of Lot.	Area.	Value for the band.	Value for Owner.	Total.
-------	-------------	-------	---------------------------	------------------------	--------

It would be well to communicate with the Company, in order that they may send their Agent with you in making the valuations and if possible he also should be satisfied with the values arrived at.

[Document No. 13]

McLean wrote again to Perron on May 29, 1911, instructing him to meet with Agent Letourneau in order to make the valuations of the property. [Document No. 14.]

9. The Caughnawaga Band Council held a meeting on June 5, 1911, at which time they passed the following three resolutions respecting the power company's request for their lands.

...
1. On motion of Michel Montour, seconded by J. T. Canadien, that the sum of \$750 an arpent² be asked for 14.89 arpents of land on the Caughnawaga common, which land will be required by the Canadian Light and Power Company. Carried unanimously.

2. It was moved by Chief Cr. Patton, seconded by J. T. Canadien, that this piece of land of the common that will be expropriated by the Canadian Light and Power Company shall become again the property of the Caughnawaga band at the expiration of the charter of the said company. Carried.

3. In the event of the Canadian Light and Power Company building, on the land expropriated, an electric railway, Dr. A. O. Patton moved that the said company shall have to place railway crossings on all the public roads. Carried unanimously.

[Document No. 15]

10. On June 7, 1911, Assistant Indian Agent Letourneau advised Indian Affairs of the amount the Caughnawaga Council had resolved to ask for the common lands at their June 5th council meeting and reported on his progress in making valuations of the lands required by the Canadian Light & Power Company. He forwarded a valuation schedule with his letter:

...
I beg to inform you that at a meeting, on the 5th instant, of the Caughnawaga Indian Council, the Councillors have decided to ask \$750.00 per arpent of the land in the Common required by the Canadian Light & Power Co'y., the Councillors where [sic] not ready to decide what proportion of the interest in the land owned by each individual, should be credited to the Band, although, there were formed an opinion that the Superintendent [sic]-General of Indian Affairs shall decide what rate per cent will be credited to the Indian Fund.

None of those Indian land owners was ready to submit a price per arpent of their lands, and it will not be ready, they say, before a week or ten days.

I have made the valuations of that land, from the St. Lawrence River to the Reserve boundary at Chateauguay, which prices you will please find in the enclosed Schedule.

The Company's Agent Frank Mc. Jacobs, after I had made the valuations, refused to submit his prices, and I presume that he want [sic] to first consult with the Company.

I beg to say that I have no idea of what percentage per arpent of the land owned by individuals which should be credited to the Band.

You will also please find enclose [sic], a copy of the Minutes of the Caughnawaga Indian Council.³

² 1 arpent (square arpent) is equal to about 0.85 acres.

³ Evidently there must have been some problem with the transmission of these minutes as Letourneau again sent them under cover of June 13, 1911 letter.

The valuation schedule attached to Letourneau's letter was as follows (items in italics are handwritten additions done in pencil). Note that there are some mathematical errors in the schedule:

Names	No of Lot.	arpt. Area	Value per arpt	for the Band	Owner	Total
Caughnawaga Common		9.06	\$400.00	3624.00		
" " " "		5.83	300.00	1749.00		5373.00
Joseph Deer	97	3.00	300.00		900.00	900.00
		7.76				
Heirs J. B. Jocks	187 & 182	8.76	300.00		2628.00	2628.00
Thomas Bruce	101	1.59	300.00		477.00	
" "	101	3.29	100.00		329.00	806.00
Michel Philipps	173	1.93	100.00		193.00	
" " "	174	.38	80.00		34.00	237.00
					[sic 30.40]	[sic either 227.00 or 223.40]
Michel Martin	108-166-166a	4.81	80.00		384.80	384.80
Agnanoni Daillebout	164-P163	1.43	80.00		114.40	
" " "	P.163	.48	100.00		48.00	162.40
Francois Delisle	113	3.01	100.00		301.00	301.00
		.04				
Mitchell O. Philipps	157	3.23	125.00	100.00	403.75	
" " " "	P 149	.87	80.00		69.60	
" " " "	one barn				400.00	873.35
Michell Montour	158 - p149	5.15	80.00		412.00	412.00
Mrs Joseph Stacey	135	3.31	80.00		264.80	264.80
<i>Peter Zacharie</i>	137	1.69	80.00		135.20	135.20
<i>Jos. Rice</i>	130	3.78	100.00		378.00	378.00
Frank Beauvais	130 A	1.45	75.00		108.75	108.75
<i>[?] to J. Cross the River</i>						
Baptiste Delorimier	129	3.27	125.00		408.75	408.75
						\$12984.30
						[sic incorrect] ⁴

[Document No. 16]

11. On June 8, 1911, Order-in-Council P.C. 1362 approved the acquisition by the Canadian Light and Power Co. of a right-of-way across the Caughnawaga Indian Reserve. Reference was made in the O.C. to the recently passed amendment to Sec. 46 of the Indian Act, which was cited above.

On a Memorandum dated 1st. June, 1911, from the Superintendent General of Indian Affairs⁵, stating that the Canadian Light and Power Company, of Montreal, has applied for right-of-way across the Caughnawaga Indian reserve, in the County of Laprairie, in the Province of Quebec, and has furnished a plan of the land required, which is on file (Numbered 1065) in the survey branch of the Department of Indian Affairs.

The Minister recommends that, under the provisions of Section I of "An Act to Amend the Indian Act," I George V. authority be given for the acquirement by the said Company of the right-of-way referred to, upon such terms as may be agreed upon.

[Document No. 17]

⁴ The sum of \$12,984.30 is incorrect. The sum of the figures cited by Letourneau is \$13,373.05. As noted in the schedule, some of the other calculations made are also incorrect.

⁵ Note that the submission to the Privy Council was made prior to the passage of the Caughnawaga Band Council Resolution of June 5, 1911. Indian Affairs was not aware of the Council's demand for reversion of the common lands required for the right-of-way upon expiration of the Canadian Light & Power Company's charter until at least two weeks after the Superintendent General's submission to the Privy Council was made. Letourneau did not forward the minutes of the council meeting until June 13, 1911.

12. Deputy Superintendent Pedley sent a communication to P. J. Delisle⁶ of Caughnawaga on June 10, 1911, advising that the Caughnawaga Indian Agent had been instructed to carry out valuations of the lands required for the right-of-way:

... Mr. Asst. Indian Agent Letourneau has received instructions to make the necessary valuations and to consult the Indian Council and each Indian whose property is affected and to obtain their consent to such reasonable valuations as may be arrived at. He was also instructed to advise the Agent of the Company to accompany him so that if possible valuations satisfactory to all persons may be arrived at.

It is understood that each Indian owner interested is to be heard in the matter and all requirements as to crossings and other matters are to be provided for.

In view of the representations made by Mr. P. J. Delisle on the part of himself and Mr. Jackson, the Department will make an especial investigation of every valuation that has not received the consent of the Indian owner. Each owner is therefore, authorized to argue his case himself or through a representative and present his own views as to the value and requirements of his own holdings and not give his consent which should be in writing until he is fairly satisfied.

[Document No. 18]

13. On June 10, 1911, J. L. Perron, Solicitor for Canadian Light & Power Company, wrote to Frank Pedley, Deputy Superintendent General of Indian Affairs, stating that arbitrators had made an award of \$7,900 in the matter of the lands required by the Canadian Light & Power Company:

As you are no doubt aware the award of the arbitrators in above matter has been made for part of the property on the 7th of June 1911, allowing the sum of \$7,900. for the part that has been agreed upon. As to the balance of the property, a third arbitrator will have to be appointed. Will you please let me have your suggestion as to this.

As to the part which has been settled, our clients are very anxious to start the work on it and are ready to send a cheque for the amount awarded at once. Will you kindly instruct me as to how you want this cheque made. If you could let me know by wire, at my expense, you would, oblige me, as the work is very pressing.

[Document No. 19]

14. On June 13, 1911, Assistant Indian Agent Letourneau forwarded the Caughnawaga Band Council minutes of June 5, 1911 (cited above) to Indian Affairs Headquarters. [Document No. 20.] (Letourneau's letter of June 7th, cited above, stated that the June 5th Minutes of Council were enclosed. There must have been some problem with the transmission of the minutes that led to Letourneau forwarding them to Indian Affairs once again.)
15. On June 17, 1911, J. D. McLean, Assistant Deputy and Secretary, Indian Affairs, replied to J. L. Perron's letter of June 10th. His reply states:

Referring to your letter of the 10th inst. I beg to inform you that we have not received an award of arbitrators stated in your said letter allowing the sum of

⁶ Peter Delisle and Louis F. Jackson were given power of attorney by certain Caughnawaga Band members on June 10, 1911. [See attachment to Document No. 18.]

\$7,900.00 for a portion of the Right of Way of the Canadian Light and Power Company through the Caughnawaga Indian reserve.⁷

We have received a statement of certain valuations made by our Agent, Mr. Lorenzo Letourneau, amounting to \$12,984.30, but the Department requires the consent of the Indian Council and of the different Indian owners interested before taking any action. The Agent has been requested to forward this consent.

[Document No. 21]

16. K. B. Thornton of the Canadian Light & Power Company wrote to J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, on June 23, 1911, to inform him that:

... owing to the fact that the arbitrators could not agree on the valuation of the "Common" property, it was decided to make two plans, the one showing the land required up to the "Common" and the other the land through the "Common." We note from your letter that you have received the plans showing the land required up to the "Common" and by this time you should have received the linen plan and two blue prints showing the land through the "Common", ...

[Document No. 24]

The plans referred to are Nos. 1 and 3 (CLSR M1065A⁸ and M1065B respectively) in the collection of plans submitted with this report.

17. Deputy Superintendent General Frank Pedley and J. L. Perron, Canadian Light & Power Company's legal counsel, met in Ottawa on June 23, 1911, but the proceedings of this meeting were not recorded. Pedley sent a short letter to Perron later that day.

Referring to our interview this morning, I beg leave to say that the Department, upon receipt of a cheque for \$8,000.00, is prepared to allow the Canadian Light & Power Company to enter on the Caughnawaga Indian reserve for construction purposes; such \$8,000.00 will be placed to the account of the said Company and the final amount to be paid is to be determined later on.

[Document No. 23]

18. A copy of Assistant Indian Agent Letourneau's valuation of the right-of-way required by Canadian Light & Power Company was mailed to J. G. Ramsden at Caughnawaga on June 24, 1911, by J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs. Due to problems with the valuations, Ramsden was instructed to make his own valuation of the property.

...
You will note that he [Letourneau] places values of \$300.00 and \$400.00 per arpent on the land in the Common. The Company considers these values too high, whereas the Indian Council think they should get \$750.00 per arpent.

The remaining values through the holdings of various individual Indians have been accepted by the Company, but the Indians consider them far too low.

⁷ Curiously, CLSR Plan 1065 (Plan no. 2 in the collection of plans submitted with this report) is signed by F. McD. Jacobs and Lorenzo Letourneau and both men are identified as arbitrators, Jacobs for the power company and Letourneau for Indian Affairs.

⁸ Appendix B is a listing of the names of proprietors, lot nos., total square arpents to be affected by the line. This was compiled from data provided on CLSR Plan M1065A.

I have to request you to make a careful valuation of all the property in detail. It would be well to have the views of all interested. Messrs. Peter J. Delisle and Louis F. Jackson have been appointed by the various Indian locatees to argue their side of the question; kindly hear all they have to say in each case.

[Document No. 25]

19. Assistant Deputy and Secretary McLean advised Indian Agent Letourneau that Canadian Light & Power Company had deposited \$8,000.00 with the Department of Indian Affairs and could therefore enter the reserve at once to begin construction. The final amount of compensation to be paid would be determined later, added McLean. [Document No. 26.]
20. At the end of August 1911, Inspector J. G. Ramsden reported that he had made his valuations of the land belonging to individual locatees, each of whom had signed an agreement. Ramsden advised that the hydro company and the Band Council would have to arbitrate to arrive at a price for the Common lands.

With reference to your letter June 24th addressed to me at Caughnawaga, Que, I have to report as follows; that I made a careful valuation of land damage and other damage done to the locatees on the Caughnawaga Reserve by the Canadian Light and Power Co.. I consulted each individual locatee and their representatives Messrs. Delisle & Jackson, and also the Power Co., and beg herewith to enclose you signed agreement for each and every locatee thus effected, and the respective amounts that are to be paid to them is herewith attached on a separate sheet. You will observe that \$5.00 per acre is credited to the funds of the Band, and that 5% is to be paid to Messrs. Delisle & Jackson according to the agreement on file, and according to each individual locatee's consent.

... [recommends payment to locatees without delay] ...

With reference to the Common Land, the Indian Council and the Company were too far apart for me to make any arrangement with them. When I left there they had decided to arbitrate, which I think is the best way to arrive at a proper price for this land, in the meantime, if the Indians change their mind, they have promised to communicate with me.

[Document No. 57]

21. The locatees each signed two agreements, one setting out an agreed-to compensation figure and consenting to the deduction of \$5 per acre for Band interest and another whereby the locatee agreed to the deduction of 5% of their compensation for payment to P. J. Delisle and L. F. Jackson.

The following provides an example of both types of the 28 agreements signed by the fourteen locatees. (The text in italicized, bold type was the portion of the agreement executed by the locatee, Inspector Ramsden, a witness and the Power Company officials; the remainder of the text was a typed form.)

Joseph Deer, #97

I, the undersigned, agree to release all my right and title to The Canadian Light and Power Company to that portion of my land to be taken for their right-of-way for the sum of \$950.00 said price to cover any inconvenience, loss or damage hitherto sustained by reason of any use by The Canadian Light and Power Company of the land. ***Five dollar per acre to go to the credit of the Band.***

[illegible Mohawk name]

(Jos. Deer)

Aug 28th 1911

JG Ramsden
Chief Inspector for Dept.
WITNESS: P. J. Delisle

THE CANADIAN LIGHT & POWER Company
E. A. Robert
 Vice-President
H. R. Mallison
 Sec. Treas.

[Document No. 40]

#97

I, the undersigned, agree to release all my right and title to The Canadian Light and Power Company to that portion of my land to be taken for their right-of-way for the sum of \$950.00 said price to cover any inconvenience, loss or damage hitherto sustained by reason of any use by The Canadian Light and Power Company of the land.

I hereby empower the Department to deduct and issue cheque for 5 per cent of the sum to the joint order of P. J. Delisle and L. F. Jackson.

[illegible Mohawk name]

(Jos. Deer)

Aug 28th 1911

JG Ramsden

Chief Inspector for Dept.

WITNESS: P. J. Delisle

THE CANADIAN LIGHT & POWER Company

E. A. Robert

Vice-President

H. R. Mallison

Sec. Treas.

[Document No. 29]

Below is a chart indicating the amount of compensation appearing in all of the agreements signed by the locatees. The data from Assistant Indian Agent Letourneau's valuation, cited earlier in this report, was added to the chart for the purposes of comparison.

Names	Lot(s)	Area (Arpents)	Value per arpt.	Value	Total Value	Comp. per Agreement	Difference
Joseph Deer	97	3.00	300.00	900.00	900.00	950.00	+50.00
Heirs J. B. Jocks	187 & 182	7.76*	300.00	2628.00	2628.00	2328.00	-300.00
Widow Thomas Bruce	101	1.59	300.00	477.00			
[Mrs. Louis Terrance]	101	3.29	100.00	329.00	806.00	806.00	0
Michel Philipps	173	1.93	100.00	193.00			
	174	.38	80.00	30.4	223.40	300.00	+76.60
Michel Martin	108-166-166	4.81	80.00	384.80	384.80	500.00	+115.20
Agnanoni Daillebout	164-P163	1.43	80.00	114.40			
	P.163	.48	100.00	48.00	162.40	200.00	+37.60
Francois Delisle	113	3.01	100.00	301.00	301.00	400.00	+99.00
Mitchell O. Philipps	157	3.23	125.00	403.75			
	P 149	.87	80.00	69.60			
	one barn			400.00	873.35	1000.00	+126.65
Michell Montour	158 - pt 149	5.15	80.00	412.00	412.00	565.00	+153.00
Mrs Joseph Stacey**	135	3.31	80.00	264.80	264.80	331.00	+66.20
Peter Zachary	137	1.69	80.00	135.20	135.20	179.00	+43.80
Jos. Rice	130	3.78	100.00	378.00	378.00	400.00	+22.00
Frank Beauvaist†	130 A	1.45	75.00	108.75	108.75	145.00	+6.25
J. Baptiste Delorimier	129	3.27	125.00	408.75	408.75	750.00	+341.25

* 7.76 arpents. Was 8.76 in Letourneau's valuation. Chief and other Band members asked that half of this amount of compensation be held for children rather than be given to their mother and heir to Jocks estate, Mrs. J. T. Canadien. [Document No. 59.]

** [Joseph Stacey and George Stacey - signed by latter but Delisle signs as power of attorney for former].

† J. Cross the River & J. B. Delorimier - In dispute [agreement signed by Joseph Cross the River and J. B. Delorimier but not Frank Beauvais]. Ramsden later indicated that this amount should be held until the dispute was settled. [Document No. 59.]

[Documents Nos. 29 to 56 inclusive]

22. A list prepared by Ramsden at the end of August gave a breakdown of the amount of compensation to be paid to the lot owners, the Band, and Delisle and Jackson:

R. of Way - Canadian Light and
Power Co. through Caughnawaga

Lot	Owner	Area	Amt for Band	Amt for men Delisle and Jackson	Amt. for Owner	Total
Lot 97	Joseph Deer	3.00	15.00	47.50	887.50	950.00
Lots 187 182	Heirs Baptiste Jocks	7.76*	38.80	116.40	2172.80	2328.00
101	Mrs. Louis Terrence	4.88	24.40	40.30	741.30	806.00
173 174	Mitchell K. Phillips	2.31	11.55	15.00	273.45	300.00
166 166A 108	Michel Martin	4.81	24.05	25.00	450.95	500.00
163P. 163P. 164	Aranoni Daillebout	1.43*	7.15	10.00	182.85	200.00
113	Heirs of Francois Delisle James McDonald Alexina McDonald	3.68*	18.40	20.00	361.60	400.00
157 & pt. 149	Mitchel O. Philips	3.91*	19.55	50.00	930.45	1000.00
158 pt. 149	Michel Montour	5.15	25.75	28.25	511.00	565.00
135	Joseph Stacey George Stacey	3.31	16.55	16.55	297.90	331.00
137	Peter Zachary	1.69	8.45	8.95	161.60	179.00
130	Joseph Rice	3.78	18.90	20.00	361.10	400.00
130A	Jos. Cross the River and J. B. Delormier	1.45	7.25	7.25	130.50	145.00
129	J. B. Delormier	3.27	16.35	37.50	696.15	750.00
		50.43	252.15	442.70	8159.15	8854.00

* Variation from amount in Letourneau's valuation. See above.

[Document No. 61]

(It should be noted that the locatees had agreed to \$5 per acre being deducted for the Band interest. The calculations were actually made on the total square arpents in each parcel rather than the acreage. As a result, the Band received more of the locatees' share of the compensation than they would have if the calculations had been done on the \$5 per acre formula set out in the individual agreements.)

23. J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, advised H. R. Mallison, Secretary-Treasurer of the Canadian Light & Power Company, that an additional \$854. would be required in order to make the payments to the locatees. (Recall that they had forwarded \$8,000. a few months earlier.) [Document No. 62.] On the same day Indian Affairs' Chief Surveyor, S. Bray, advised McLean that the amount due for Lot 130A would be withheld pending resolution of an ownership dispute.⁹ Also, half the amount due for Lots 182 and 187 would be withheld. [Document No. 63.]

⁹ In December of 1912, Indian Affairs decided that Joseph Cross-the-River was entitled to the compensation. Cheques were forwarded to the agent, one for \$80.50 for Cross-the-River and one in the amount of \$50 for Frank Beauvais from whom Cross-the-River had purchased the property and who had not yet been paid. [Documents Nos. 90, 91.] This decision was questioned and then affirmed by Indian Affairs two years later and it was ordered that the cheques which had been issued in 1912 be paid over to the recipients. [Document No. 123.] Later that year Surveyor W. R. White conducted an examination along with the Departmental law clerk and determined that J. B. Delorimier was actually the

24. On September 2, 1911, cheques were sent out to the locatees for the sums to which they had agreed, less the amount deducted for the payment of \$5 per acre for the Band's interest and 5% for P. J. Delisle and L. F. Jackson. [Documents Nos. 64 to 76.]

rightful owner of the lot. [Document No. 136.] It was later reported that the compensation paid for the right-of-way over Lot 130A had never been turned over to Delorimier. However, Indian Affairs advised that since they had covered the costs of the examination into ownership Delorimier had no further claim. In 1935 proceedings were initiated in the Superior Court of Montreal with Cross-the-River as plaintiff. The judgement ruled in his favour. An appeal in the Court of King's Bench was sought and maintained in February 1937. The ruling was that the Superior Court had no jurisdiction and, even if it had, the judgement was unfounded. [Documentation on this matter can be found on the following file: National Archives, RG 10, Vol. 7656, File 21005-4, Part 2, Reel C-11604.]

Negotiation of Compensation for the Common Lands, September 1911-1914

25. On September 16th, Chief Surveyor Bray reported that the power company had sent the additional \$854 as directed and he recommended that the Department "await Mr. Ramsden's report on the Common before taking action which may lead to arbitration with the company." [Document No. 77.] A few days later McLean instructed Inspector Ramsden to supply a report on the value of the Common lands and to report whether any individuals were entitled to compensation for improvements on those lands. He added that the Department would "not consent to have an arbitration with the said company unless you report that the sum to be demanded is in your opinion a just and reasonable amount". [Document No. 78.]

26. Ramsden addressed the following reply to McLean on September 28, 1911:

... I would suggest writing to the Power Co. asking them to make the best offer they are prepared to make rather than go to arbitration.

When I was in Montreal, as I have already reported, the Band and Company were too far apart for me to try any conciliation.

The Company suggesting \$2000 or about \$140 per arpent, the Agent valuing it at from 300 to 400 per arpent, while the Band demanded some \$600 to 700 per arpent. This goes to prove it a very hard piece of land to value.

There is a portion of this property now on the market having been recently surrendered. If any offer could be got for a portion of this surrendered land it would form a basis of values.

I am opposed to the Band arbitrating if a settlement can be got in any other way. This is why I suggest asking the Company to make an offer. Arbitration will be expensive, but as this is a band matter affecting the whole tribe they will not feel it as though it were an individual case.

I succeeded in settling all the individual locatees cases, but felt the Chief and council were unreasonable in their demands on the "common". If after you receive the offer from the Company the Band still holds out for their price I would say arbitrate, as I believe the valuation placed by Agent LeTourneau is more than the land is worth.

[Document No. 79]

27. H. R. Mallison, Secy.-Treas. of the Canadian Light & Power Company, wrote to Inspector Ramsden advising that an additional piece of property belonging to Caughnawaga Band member Big John Canadian would be required in connection with "our transmission light right-of-way". The property reportedly measured 102 feet by 17 feet. Mallison claimed that Canadian had indicated a willingness to accept \$25. [Document No. 82.] J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, advised Mallison that a plan showing the strip of land in question would have to be supplied before the Department could consider the matter. [Document No. 83.] A map and description were forwarded on December 18, 1911. [Document No. 86.] Two days later McLean advised that the sum of \$25.00 would be accepted on behalf of John Canadian. [Document No. 87.] No type of agreement or release from Big John Canadian was found by the researchers.

28. In October of 1911 Samuel Stewart, writing on behalf of J. D. McLean, had asked the Canadian Light & Power Company to advise as to the highest sum they would be willing to pay for the common lands. [Document No. 80.] By January of 1912 Indian Affairs was still waiting for a reply. [Document No. 88.] Inspector J. G. Ramsden reported on the 20th of

January that he had held a lengthy meeting the previous day with E. A. Robert, the Vice-President of Canadian Light & Power Company, and J. L. Perron, the company's legal counsel:

... and got them to finally make an offer of \$2,700.00 for the fourteen arpents [actually 14.89] in this portion of the right of way [\$181.33 per arpent]. You will remember that the last offer made verbally to me by the company was \$2,000. and the Indian Council asked a price of all the way from \$800. to \$500. per arpent. In discussing the matter with the Chief, recently, he said that there was no possibility of the Council agreeing to less than \$400. per arpent, so that it is quite clear there is no possible way of satisfying the Band unless the Department desires to submit the matter to arbitration. This is a very difficult piece of property to value; it is not assessed nor is there any property in the vicinity assessed that is similarly situated; nor has there been any of this property marketed. The only piece of property that I have in mind that was sold on the reserve was sold for school purposes right in the heart of the village at the price of \$300. per arpent. I would consider this village property worth nearly double the amount of the property in question.

I got a quotation on this property from the Carrick Company Ltd. which quotes a price of \$250. per arpent. This they stated to me was what they considered the top price to ask. I file their written valuation.

I also consulted the Beaudry Realty Company and Messrs. Beaudry & Beaudry gave me a valuation of from \$200.00 to \$250.00 per arpent, and promised to reduce this valuation to writing but I am not yet in receipt of same. I consulted a number of other real estate men but they did not care to place a valuation upon it.

The land valuation on this portion of the right of way is a very difficult matter and in my opinion at the best considerable of a conjecture.

I may say the offer of \$2,700. made by the company was made as stated by them for the purpose of having no difficulty with the Department and having the good will of the Indian Band, but they claim that they would prefer to arbitrate rather than have the department accept these figures.

If the property were my own I would sell at \$200. per arpent rather than arbitrate. If the Department think it wise to arbitrate rather than accept the \$2,700.00 which is positively the highest offer that will be made, it would of course establish a value in this district, and would make the Indian Council wiser if not richer.

[Document No. 89]

29. J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, asked Caughnawaga Assistant Indian Agent Letourneau to ascertain the Band Council's views regarding the Canadian Light & Power Company's offer of \$2,700 for the common lands. [Document No. 92.] McLean also wrote to the power company's Secy.-Treasurer on the same day asking for an official statement of the highest sum they were willing to pay for the common lands. McLean noted that "a wellknown Real Estate Firm in Montreal" had made a considerably higher valuation; also, the Band would not accept less than \$400.00 per arpent. [Document No. 93.] Four days later, Mallison replied that the Company would not offer more than \$2,700.00. [Document No. 94.]
30. On March 8, 1912, the Caughnawaga Band Council resolved to accept no less than \$300 per arpent (\$4,467) for the common lands:

In the matter of the expropriation of the Caughnawaga Commons by the Canadian Electric & Power Cos which the Department desires to have the councils opinion in the matter

Proposed by John Sky Councillor seconded by John Treff Councillor that the land expropriated in the Commons should be demanded \$300~~00~~ per arpent for the following reasons

A surrender of .60 acres has been made to the Crown by the band for industrial purposes with a view of employment for our people. The Electric Company has gone through in the center of this land surrendered which well may hinder the prospective concerns to locate there this is on the Island. And on the main land the Band will be deprived of the best land for building purposes which they are now building and have built on each side of the Electric right of way. The Band has reserved 7 Acres of the Commons for playgrounds which the said Company have expropriated the best portion of this playgrounds

Mr. L. Letourneau Esq. Indian Agent had estimated and reported to the government at \$300~~00~~ per arpent for the West of the C.P.R.R. and \$400~~00~~ per arpent on the east side of the C.P.R.R.
Adopted Unanimously

[Document No. 95]

31. On March 22, 1912, S. Bray, Chief Surveyor, Department of Indian Affairs, wrote a memorandum to the Deputy Minister recommending that the Canadian Light & Power Company be requested to either pay \$300 per arpent (\$4,467) *or* provide the name and address of the person who would be acting as their arbitrator. In case arbitration was decided upon, Bray suggested that the Caughnawaga Band be asked to give the name of the person they would like to have appointed as their arbitrator. [Document No. 96.] J. D. McLean followed up on Bray's suggestions a few days later with letters to the power company and Assistant Agent Letourneau. [Documents Nos. 97 and 98.]
32. On April 4, 1912, the Caughnawaga Band passed a resolution stating that they wished to appoint Robert Orr of Chateaugay as their arbitrator. [Document No. 99.]
33. J. L. Perron, Legal Counsel for Canadian Light & Power Company, replied to McLean's letter of March 26 on April 17, 1912. He asked for a "copy of the Order-in-Council regulating that expropriation" and stated:

...
... I beg to refer you to Article 6564 and following of the Revised Statutes of Quebec, under which, I contend, the expropriation in this matter has to take place, and please let me know if you agree with me.

[Document No. 100]

34. Assistant Deputy and Secretary McLean forwarded Perron's letter to E. L. Newcombe, Deputy Minister of Justice, and was advised that the articles of the Revised Statutes of Quebec (1909) cited therein were indeed correct. [Document No. 101.] McLean informed Perron that the Department had no objection to the arbitration proceeding under Article 6564 and following of the Revised Statutes of Quebec. He suggested that Perron ensure that the notices mentioned under Article 6565 be served to the Superintendent General of Indian Affairs. The Superintendent General would then name an arbitrator under Sub-section 2 of 46, Chapter 81, Revised Statutes, 1906.¹⁰ [Document No. 102.]

¹⁰ Sub-sec. 2 of Sec. 46 of the Indian Act was cited earlier in this report in paragraph number 5.

35. On June 12, 1912, Séraphin Ouimet, Quebec Lands Surveyor, prepared a technical description of the Caughnawaga Common lands desired by the Canadian Light & Power Company. The land was comprised of three parcels which contained 5.83, 0.71, and 8.35 square arpents respectively. Ouimet executed a sworn declaration on June 14, 1912, stating that, in his opinion, the sum of \$2,700.00 was fair compensation for the land in question. [Document No. 103.]
36. On June 17, 1912, the Canadian Light & Power Company and their solicitors sent the Superintendent General of Indian Affairs formal notice under Article No. 6565 of the Revised Statutes of Quebec. The notice reiterated the description of the common lands required, stated that the Company was prepared to pay only \$2,700, and that they had appointed John L. Brodie, Valuator, as their arbitrator. [Document No. 104.]
37. On July 9, 1912, a petition was drafted by the power company's attorney, J. L. Perron, which stated that the Department had failed to appoint an arbitrator as set out in Article 6568, R.S.Q., and that they wished to have a Judge of the Superior Court appoint a provincial land surveyor as the sole arbitrator. [Document No. 105.] Indian Affairs asked their Advocates Blair & Lavery to attend the hearing of this petition on July 24th. [Document No. 106.] Blair & Lavery were thus able to get Robert Orr appointed as the arbitrator on behalf of the Caughnawaga Band. It was reported that Orr would need to meet with the Canadian Light & Power Co.'s arbitrator, John L. Brodie, in order to appoint a third arbitrator. [Document No. 107.]
38. On August 19, Robert Orr advised J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, that he had met with the company's arbitrator John L. Brodie. Brodie had asked Orr whether he had obtained any legal advice. Orr noted he had been told by various parties that the Band should have a lawyer to prepare their case for presentation before the arbitration board. Orr's letter also noted that the common lands required by the company were more valuable than ordinary common lands as a portion of the lands to be taken were being used as a recreation ground by the Band. [Document No. 111.] Indian Affairs advised Orr to inquire of the Indian Agent and Band Council as to whether they wished to retain the services of a lawyer. With regard to Orr's statement about the value of the common lands, he was told to exercise his own judgement in the matter. [Document No. 112.] Orr advised DIA Headquarters on September 16, 1912, that Dr. Patton, Mayor of Caughnawaga Council, had stated that no lawyer was required. Orr also reported in his letter that he had met with the power company's arbitrator to appoint a third arbitrator. They had made a choice but the individual had refused to accept the position. [Document No. 114.]
39. The following spring, on April 11, 1913, the Caughnawaga Band Council passed a resolution to inquire to DIA about whether Canadian Light & Power Company had paid for the common lands yet. [Document No. 115.] Several months later, on September 23, 1913, J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, asked Robert Orr if he and the other arbitrators had agreed upon an award yet. [Document No. 116.] Orr replied soon thereafter that he and Brodie had not yet been able to appoint a third arbitrator, having held meetings for such a purpose without success. Brodie had left to take care of other business and then the company's lawyer was away attending to his duties at the assembly. Thus, they had decided to allow the matter to stand until May or June of 1913.

On September 4th, Orr had been told by Brodie that, because of changes in provincial railway legislation, their duties as arbitrators were to cease. [Document No. 117.]

40. Samuel Stewart, Acting Deputy Superintendent General of Indian Affairs, wrote to J. L. Perron, Attorney for the Canadian Light & Power Company, inquiring about what should be done in the matter of the arbitration proceedings. [Document No. 118.]
41. Perron explained the changes to the law governing expropriations in his reply to Stewart on November 3, 1913:

... the law concerning expropriations had been changed at the last session of the Legislature of the Province of Quebec. The proceedings have now to take place before a judge instead of before arbitrators. It has been decided in a case of the district of Quebec, ... that proceedings taken under the old law had to be completed under the new law, and therefore, the arbitrators appointed in this case are functis officio.

[Document No. 120]

42. On November 17, 1913, the Deputy Superintendent General, D. C. Scott, authorized the Montreal legal firm Blair, Laverty & Hale to take such action on their behalf as was necessary to proceed with the arbitration before the judge. [Document No. 122.]
43. Blair, Laverty & Hale advised Assistant Caughnawaga Indian Agent, L. Letourneau, on February 5, 1914, that they had been unable to make any progress in the matter of the arbitration because the company's attorney J. L. Perron had been away attending to his duties as a member of the Quebec Legislature. They recommended that real estate experts be appointed to prepare the Band's case and provide evidence at an eventual arbitration hearing. Their letter also noted that they believed that apart from the "actual value of the land to be taken substantial damages should be granted the Indians, based on the fact that the Company's line cuts the Common in two and practically prevents access from one portion to the other, thereby, it seems to us, greatly diminishing the value of what is left." [Document No. 124.] Letourneau forwarded this letter to DIA Headquarters. [Document No. 125.] J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, replied that Letourneau should consult with the Band Council about whether they wished to retain the services of any real estate experts. [Document No. 126.] On April 17th, the Band Council resolved that the Council and the Indian Agent would give evidence on behalf of the Band. [Document No. 127.]
44. Upon receiving a copy of the BCR of April 17th, Blair, Laverty & Hale wrote letters to J. D. McLean and Lorenzo Letourneau. [Documents Nos. 128 and 129.] They stated that if they went to court relying upon the evidence of Band members they would almost certainly face defeat. In the letter to McLean it was noted:

...
We recognize the fact that the services of real estate experts would involve an expense probably out of all proportion to the amount in question; this is a drawback common to all such small expropriations. If we can only come to some kind of a settlement with the Company it would be much better than pressing the present litigation, which the Company is in a much better position to handle than we are, as they are certain to be well provided with experts.

[Document No. 128]

On May 4, 1914, J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, wrote back to Blair, Lavery & Hale, stating that they had noted their views respecting "the probable failure of the case of the Indians before the Judge in the proposed arbitration proceedings." It was noted that the lawyer for the Canadian Light & Power Company, J. L. Perron, had suggested that he (Perron), along with the agent and Blair, Lavery & Hale, should meet to see if they could reach an amicable settlement. McLean suggested, however, that a duly authorized valuator of the company should first meet with a duly authorized valuator of the Department to discuss the matter. McLean instructed Blair, Lavery & Hale to ascertain from the power company when they could meet. [Document No. 130.]

46. On May 8, 1914, Caughnawaga Band Council resolved to appoint F. M. Jacobs, Chief Councillor, and Dr. A. D. Patton to assist W. R. White, Surveyor, Department of Indian Affairs, to arrive at an agreement with the Canadian Light & Power Company. [Document No. 131.]
47. On May 19, 1914, W. R. White, Surveyor for the Department of Indian Affairs, wrote a memo to D. C. Scott, Deputy Superintendent General of Indian Affairs, stating that the Band had agreed to accept \$3,316.50 for the common lands.

In accordance with verbal instructions to endeavour to arrange a conciliation between the Canadian Light and Power Company and the Department regarding the valuation of their right of way through the commons of the Caughnawaga Indian Reserve, I beg to say I went over the ground very carefully and estimated the value of the portion of the mainland taken at \$325 per acre, and the portion of the island taken at \$200 per acre. I then interviewed Chief Jacobs and explained to him how unreasonable were the prices that they had asked, namely \$600.00 per acre and also that our lawyer, Mr. Lavery, states that he had not sufficient evidence to win the case. I gave him my reasons for the valuation and explained to him why I thought it was fair and just, and asked him to state his reasons why the Band placed the value of \$600 per acre on this land, he at once stated that he had not considered that the lands were worth more than \$325 per acre for the mainland, but that he thought the island should be worth \$250. I asked them to arrange for two or more of their councillors to accompany [me?] and a representative of the Company to inspect the lands on Thursday the 14th instant, and Chief Jacobs and Dr. Patton were selected. We met the Company's representative, Mr. Broddie, and after considerable discussion informed him verbally that the least the Band was willing to accept was as follows:-

Mainland	6.42 acres @ \$325 per acre ¹¹	=	\$2086.00
Island	6.15 acres @ \$200 per acre	=	<u>\$1230.50</u>
	Total		\$3316.50

I beg to recommend that the Company be officially informed that this is the valuation placed upon it and that upon receipt of this sum an Order in Council will be applied for, permitting them to acquire this land.

[Document No. 132]

A marginal note by Scott said "Approved".

¹¹ 6.42 and 6.15 acres add up to a total of 12.57 acres or about 14.46 sq. arpents, somewhat less than the 14.89 acres previously stated. Based on these figures, the Band was to receive about \$282 per square arpent for the mainland property and about \$174 per square arpent for the island property, being an average price of about \$229 per square arpent. This is substantially less than what they had previously demanded (up to \$750 per square arpent).

48. D. C. Scott, Deputy Superintendent General of Indian Affairs, conveyed the above valuation of \$3,316.50 to the Canadian Light and Power Company on May 26, 1914, stating: "If you consider this a fair valuation and pay this sum to the Department an Order in Council will be applied for permitting your Company to acquire these lands." [Document No. 133.]

49. The legal firm of Blair, Lavery & Hale addressed a letter to the Secretary of Indian Affairs advising of the progress that had been made with regard to the final settlement on a figure of compensation for the common lands on June 2, 1914. They advised that they had approached the power company with the offer of \$3,316.50 and the company had countered by raising their offer from \$2,700 to \$3,000:

We have had several interviews with your Mr. W. R. White regarding the expropriation of a portion of the Caughnawaga reserve by the Canadian Light, Heat & Power Co. He met the Indians and after a consultation with them instructed us to make an offer to the Company for an immediate settlement at the sum of \$3316.50, being at the rate of \$325.00 for part of the land and \$200.00 for the balance, which is not so well situated. The price offered by the Company was some \$2700. We are in receipt of letter from the latter's attorneys stating that they have advised the Company to raise their offer \$300.00, making \$3,000., at which they would be prepared to settle, stipulating as a condition that clear title be given the Company, as there may be some question as to whether those portions of the property submerged at certain periods of the year belong to the Provincial Government.

We shall be pleased to have your early response and instructions.

[Document No. 134]

50. The Deputy Superintendent General of Indian Affairs, D. C. Scott, replied to Blair, Lavery & Hale on June 6, 1914. Scott stated that the Department would either accept \$3,000.00 plus 5% interest per annum from August 1911 or the sum of \$3,316.50. He added:

...
The Patent from this Department gives title to the land not covered by water and carries with it riparian rights, which it is thought the Province cannot dispute.

[Document No. 135]

51. On July 14, 1914, Blair, Lavery & Hale wrote a letter addressed to the Superintendent General of Indian Affairs stating:

We submitted to the attorneys for the City your proposition to pay \$3,316.50 for settlement of this matter and are this morning in receipt of letter stating that they will accept these terms and asking us to have the deed prepared. Have you any choice of Notary for that purpose? We presume some departmental order or Order-in-Council will require to be passed to authorize the transaction; if so, we would thank you to attend to this detail. We would also like you to indicate how the deed should be drafted, who will appear as vendor and who will sign on behalf of the Government, the Indians or the Department?

[Document No. 137]

52. On July 17, 1914, J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, informed Blair, Lavery & Hale that once the Department had received \$3,316.50 they would apply for an Order-in-Council permitting the sale to Canadian Light & Power Company of the land in question:

I beg to acknowledge the receipt of your favour of the 14th instant, stating that the Canadian Light & Power Company have agreed to accept our valuation of \$4,316.50, for the right of way of the Canadian Light & Power Company through the commons of the Caughnawaga Indian Reserve.

Upon receipt of this sum an Order-in-Council will be applied for, permitting this Department to sell to that Company the land in question, and as soon as this Order-in-Council has been passed a Patent will be prepared here and forwarded to the Company.

...

[Document No. 139]

53. On July 17, 1914, J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, also wrote to the Canadian Light & Power Company, advising that they had received the news (via Blair Hale & Lavery) that the company had decided to accept the valuation of \$3,316.50 for the Caughnawaga common lands.

I have been informed by Mr. Lavery of the firm Messrs. Blair, Lavery & Hale, that your Company has accepted our valuation of \$3,316.50, for the right of way of the Canadian Light & Power Company through the commons of the Caughnawaga Indian Reserve. I beg to request you to be good enough to forward this sum directly to this Department and upon receipt thereof an Order-in-Council will be applied for, permitting your Company to acquire these lands, when this has been passed a Patent will be forwarded to your Company by this Department.

[Document No. 138]

54. On August 4, 1914, a Land Sales entry (Sale No. 7, Folio 343) was made out by Indian Affairs in their land sales book for the Caughnawaga Reserve. It was for the sale of "a strip of land across part of Indian Res at Caughnawaga" which was "req'd for Rt-of-way across Indian Res. See O.C. of 8 June 1911, File 380,535-1. See letter of 26 May 1914 File 380,535-2". It was noted that the lands totalled 65.33 arpents and that the sum paid was \$3,316.50. (The reference number for patent of 17,390 was assigned but then crossed out.)

[Document No. 140.]

55. A description and plan, both prepared in June of 1912, were forwarded to the Department of Indian Affairs on August 15, 1914 by the firm Blair, Lavery & Hale. [Document No. 141 and attachments; also Plan No. 4 in the collection of plans submitted with this report.] On August 22, 1914, J. D. McLean acknowledged receipt of this material and stated:

...
It is intended to have one patent cover the right of way through the Commons as well as the portion of the right of way through the reserve outside of the Commons. An Order in Council is being applied for permitting the Department to sell the whole of this land.

Handwritten marginalia on this letter, likely by Samuel Bray of the Surveys Branch, states: "No O.C. other than that of 8th June 1911 is necessary".

[Document No. 143]

56. W. R. White, of the Department of Indian Affairs' Surveys Branch, prepared a metes and bounds description for a patent of the right-of-way on September 19, 1914. The description stated that the entire strip of land contained 65.33 square arpents and measured 100 feet in width. [Document No. 144.]

57. In October of 1914 there was some discussion between the Canadian Light & Power Company and the Department of Indian Affairs about acreage figures in the Description for Patent prepared in September. It was confirmed that the correct amount of land to be covered by patent was 65.33 square arpents, being 50.44 square arpents held by individuals and 14.89 square arpents of common lands. [Documents Nos. 145 and 146.]

**The Dispute over the Parcel of Land under Lease to Kanawaki Golf Club and
Delay in the Issuance of Letters Patent to Canadian Light & Power Co.,
November 1914-1933**

58. Contemporaneously, it was reported to the Department of Indian Affairs that the Kanawaki Golf Club's lease covered lands which overlapped onto the Canadian Light & Power Company's right-of-way (the parcel in question was in Lot 97, see Plan No. 5 in the collection of plans submitted with this report). [Document No. 147.] Indian Affairs decided to withhold the patent to the power company until they and the golf club had come to some satisfactory arrangement on the matter. [Document No. 148.] Solicitor Perron, representative for the power company, asked to have the golf club's encroachment stopped, stating "As you no doubt recollect, the Department has guaranteed clear deeds to the Canadian Light & Power Company." [Document No. 149.] Correspondence on this matter continued over the next several years. [See, for example, Documents Nos. 150, 151, 152, and 153.] It is interesting to note that a letter from the legal firm Blair, Laverly and Hale to the Assistant Deputy and Secretary of Indian Affairs written in April of 1915 discussing the golf club issue reported that the Canadian Light & Power Company would insist that the transaction of obtaining the right-of-way was a purchase from the government rather than an expropriation.

We have your favor of the 16th in connection with this matter and have as requested submitted your contentions to Mr. Perron. We are afraid that the obvious answer he will make is that the transaction is really a sale of this property by the Government to the Company and not an expropriation.¹² It is true the Company started proceedings along these lines, but the matter never proceeded further than the service of the petition, in so far as the actual expropriation was concerned, and it was settled by an understanding whereby the Company agreed to purchase from the Department the stated area for a stated price. ...

...

[Document No. 152]

59. In a letter to the Indian Affairs Department of August of 1925, the legal firm of Foster, Mann, Place et al, on behalf of Canadian Light & Power Company, inquired whether "any deed was executed between the Department and Company giving effect to the authorization contained in the Order in Council". [Document No. 154.] Indian Affairs advised that they were still waiting for the power company to settle with the golf club. [Document No. 155.]

The matter remained in abeyance.

60. An interesting statement was made on March 11, 1930, by A. F. Mackenzie, Acting Assistant Deputy and Secretary of the Department of Indian Affairs, in a letter to a legal firm that had been consulted by Caughnawaga Band members concerned about the inadequacy of compensation offered by another power company (Cedar Rapids) seeking a right-of-way for a transmission line over Caughnawaga lands.

...

In connection with your comment as to the price paid by the Canada Light and Power Company, I may say that this Company purchased the right of way whereas in the present instance it is not a sale but an easement which is proposed to be granted to the Company. This latter will leave the land

¹² McLean's April 16th letter had referred to the transaction as an expropriation. [See attachment, Document No. 152.]

available for use by the band or the individual Indian owners, except those portions actually occupied by towers or poles. ...

[Document No. 157]

61. In May of 1932, the Beauharnois Electric Company Ltd. applied for permission to erect a power line within the right-of-way of the Canadian Light & Power Company. Indian Affairs granted permission, stipulating that any trees cut outside of the right-of-way during construction would have to be paid for. [Document No. 158, 159, 160, and 161.] No further documentation has been located on this company's subsequent activities on this right-of-way.
62. In January of 1933, the Kanawaki Golf Club and Canadian Light and Power Co. finally reached an agreement respecting the parcel of land overlapping onto the transmission line right-of-way (Lot 97). The golf club agreed to have the property withdrawn from their lease and, upon receipt of title from Indian Affairs, the power company would lease back the land to the Golf Club. [Documents Nos. 164 and 165.] The Chief Surveyor of the Indian Affairs Department examined the agreement in question and forwarded the June 8, 1911 Order-in-Council and September 1914 Description for Patent to the Lands Branch for action. [Document No. 166.]
63. On May 4, 1933, Letters Patent Reference No. 22523 were issued to the Canadian Light & Power Company, for the entire right-of-way, said to contain 65.33 square arpents in total, being a strip of land 100' wide.¹³ (Although the patent covered the lands of the entire right-of-way, including both common lands and individually located lands, it only made reference to the sum of \$3,316.50 which had been paid for the common lands. This did not include the earlier \$8,854 payment made to individual lot owners.)

George the Fifth by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith, Emperor of India.

To all to whom these Presents shall come GREETING:

Whereas the lands hereinafter described are part and parcel of those set apart for the use of the Iroquois of Sault St. Louis
AND WHEREAS We have thought fit to authorize the sale and disposal of the Lands hereinafter mentioned, in order that the proceeds may be applied to the benefit, support and advantage of the said Indians, in such a manner as We shall be pleased to direct from time to time. AND WHEREAS
The Canadian Light and Power Company, of Montreal, in the Province of Quebec, in Our Dominion of Canada, have contracted and agreed to and with the Superintendent General of Indian Affairs duly authorized by Us in this behalf for the absolute purchase at and for the price and sum of Three Thousand, Three Hundred and Sixteen Dollars and Fifty Cents of lawful money of Canada, of the Lands and Tenements hereinafter mentioned and described of which we are seized in right of Our Crown.

Now Know ye that in consideration of the said sum of Three Thousand, Three Hundred and Sixteen Dollars and Fifty Cents by them the said The Canadian Light and Power Company
to Our said Superintendent General of Indian Affairs in hand well and truly paid to Our use at or before the sealing of these Our Letters Patent, We by

¹³ It is unclear why the Department of Indian Affairs would have acceded to the company's request to have letters patent issued for this right-of-way. In the case of other contemporary transactions, Indian Affairs granted fixed term easements to power companies seeking rights-of-way over Indian reserves for the purposes of erecting power transmission lines. An example of such an easement agreement has been included in Appendix C at the end of this report.

these Presents, do grant, sell, alien, convey and assure unto the said The Canadian Light and Power Company their successors and assigns forever, all those Parcels or Tracts of Land, situate, lying and being in the Caughnawaga Indian Reserve, in the County of Laprairie in the Province of Quebec in Our Dominion of Canada.

Containing together by admeasurement Sixty-five Square Arpents and Thirty-three Hundreds of a Square Arpent be the same more or less. Composed of a strip of land one hundred feet in width and which may be described as follows-

Firstly:- Commencing at the point where the Southerly limit of the right of way of the St. Lawrence and Adirondack Railway intersects the West limit of the said Indian Reserve; thence North eight-seven degrees and thirty minutes East along the said southerly limit seven thousand seven hundred and sixty-six feet and seventy-three hundredths of a foot more or less to a point two hundred and sixty-two feet and seventy-three hundredths of a foot East of the East limit of the Primeau Road; thence Southerly at right angles to the last mentioned course one hundred feet; thence Westerly parallel with and one hundred feet normally distant from the said Southerly limit of the right of way of the St. Lawrence and Adirondack Railway a distance of seven thousand, seven hundred and seventy-two feet and seven hundredths of a foot, more or less, to the West limit of the said Reserve; thence North twenty-eight degrees and five minutes West along said Westerly Limit of Indian Reserve one hundred and ten feet more or less to the place of beginning; containing by admeasurement twenty-three square arpents and sixty-nine hundredths of a square arpent, be the same more or less, after excepting thereout and therefrom the Primeau Road allowance.

Secondly:- Commencing at the point where the Northerly limit of the right of way of the St. Lawrence and Adirondack Railway intersects the Easterly limit of the Primeau Road; thence North thirty-five degrees and fifty minutes East along the said Easterly limit one hundred and fifty feet and one tenth of a foot; thence North seventy degrees and thirty minutes East magnetically a distance of ten thousand, six hundred and twenty-eight feet and five hundredths of a foot more or less to the West limit of the road West of the Canadian Pacific Railway; thence southerly along said Westerly limit of said road one hundred feet more or less to a point one hundred feet normally distant from the last mentioned course; thence Southerly seventy degrees thirty minutes West a distance of ten thousand five hundred and forty-two feet and seven hundredths of a foot to a point opposite the Easterly limit of the parcel first described; thence south two degrees and thirty minutes East forty-five feet and nine-tenths of a foot more or less to the north limit of the right of way of the St. Lawrence and Adirondack Railway; thence Westerly along said Northerly limit one hundred and eighty-seven feet and seven-tenths of a foot more or less to the place of beginning and containing by admeasurement thirty two square arpents and fifty-seven hundredths of a square arpent be the same more or less, after excepting thereout and therefrom the crossing of the St. Isadore Road and a public road about one thousand and sixty-one feet West of the St. Isadore Road.

Thirdly: Commencing at the point where the Northerly limit of the second parcel herein described; being produced would intersect the East limit of the right of way of the Canadian Pacific Railway; thence North forty-eight degrees fifty minutes East two hundred and sixty-one feet and two tenths to the North-east corner on the West side of Laprairie road; thence following the said West side of the road South thirty-degrees fifty minutes West two hundred and sixty-two feet and seven-tenths to the South-west corner on the said East side of the Canadian Pacific Railway right of way; thence following the said right of way in a North Westerly direction one hundred and five feet and one tenth to the point of beginning and containing seventy-one hundredths of a square arpent.

Fourthly:-Commencing at the point where the North limit of the thirdly described parcel being produced, would intersect the East side of the Laprairie Road; thence North twenty-three degrees ten minutes East one thousand, nine hundred and seventy-five feet to a second corner; thence North fifty-eight degrees thirty minutes West thirty-five feet and seven tenths to a third corner; thence North twenty-five degrees twenty minutes East one hundred and ninety-one feet and three-tenths to the mean high water mark on

the South shore of the St. Lawrence River; thence following the said mean high water mark in a South Easterly direction to a point distant three hundred and seventy-five feet and three-tenths of a foot measured at right angles to the last course; thence South twenty-five degrees twenty minutes West one hundred and eight-seven feet and seven-tenths of a foot; thence North fifty-eight degrees thirty minutes West two hundred and thirty-four feet and six-tenths of a foot; thence South twenty-three degrees ten minutes West one thousand, nine hundred and eighty-nine feet and two-tenths of a foot; thence South forty-eight degrees fifty minutes West thirty-nine feet and four-tenths to a corner on the East side of the Laprairie Road; thence following the said East side North thirty degrees forty-five minutes West one hundred and one feet and three-tenths to the point of beginning, containing eight square arpents and thirty-six hundredths of a square arpent, excepting thereout and therefrom that portion covered by water, as the said right of way is shown on a plan of the same prepared by S. Ouimet, Quebec Land Surveyor, dated at Montreal on the Sixteenth day of September, 1910, and of record in the Surveys Branch of the Department of Indian Affairs under Number M.1065.

The bearings are magnetic and measurements in French feet.

To have and to hold the said Parcels or Tracts of Land hereby granted, conveyed and assured unto the said The Canadian Light and Power Company, their successors and Assigns forever; SAVING, EXCEPTING AND RESERVING, NEVERTHELESS, unto Us, Our Heirs and Successors, the free use, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on or under or be flowing through or upon any part of the said Parcels or Tracts of Land hereby granted as aforesaid.

GIVEN under the Great Seal of Canada, WITNESS, Our Right Trusty and Right Well-beloved Cousin and Counsellor, Vere Barbaton, Earl of Bessborough, a Member of Our Most Honourable Privy Council, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, formerly Captain in Our Territorial Army, Governor-General and Commander-in-Chief of Our Dominion of Canada.

At OTTAWA, this Fourth day of May, in the year of Our Lord, one thousand nine hundred and Thirty-three and in the Twenty-third Year of Our Reign.

Ref. No. 22,523 }
BY COMMAND.

Sale No. 343.

Thomas Mulvey
Under Secretary of State
General

A. S. Williams
Acting Deputy of the Superintendent
of Indian Affairs

[on side of page:]
Recorded at the Department of Indian Affairs
the 9th May 1933.
Liber 8 Folio 10.
J.C. Caldwell
Registrar of Indian Lands Patents

[Document No. 167]

64. On July 27, 1933, the Registrar of the Registry Office in the County of Laprairie was notified by J. C. Caldwell, Registrar of Indian Lands Patents, Department of Indian Affairs, that Patent No. 22,523 had been issued to the Canadian Light & Power Company. [Document No. 168.]

In December of 1933, the Departmental Secretary informed the Canadian Light & Power Co. that a parcel of land covered by the right-of-way to the Company had already been patented to the CPR in 1913. Thus, it was noted that a corrected patent would have to be issued. [Document No. 171.] No evidence was found that this was ever done.

Miscellaneous Correspondence about the Canadian Light & Power Right-of-Way and the Taking and Return of Caughnawaga Lands for the St. Lawrence Seaway Canal, 1935-1996

66. In February of 1935, the Law Clerk of the Department of Highways, Province of Quebec, wrote to the Department of Indian Affairs stating that they required a portion of Lot 1 in the Caughnawaga Reserve which had been acquired by the Canadian Light & Power Company (a sketch plan forwarded therewith illustrated the location of the parcel). They asked to be informed of the price paid by the power company. [Document No. 172.] Indian Affairs replied that the power company had paid \$325 for the mainland property which they had acquired. [Document No. 173.]

67. On January 8, 1947, C. H. Taggart, Commissioner, Indian Affairs Branch, wrote the following memorandum to a Mr. A. E. St. Louis, Archivist at Indian Affairs, regarding the patent issued to the Canadian Light & Power Company in 1933.

Thanks for the copy of Patent #22523 - May 4th, 1933, issued to Canadian Light Heat and Power Co., which it appears is an absolute alienation of the whole right of way across the Reserve.

It is observed, however, that the amount paid by the Company is only \$3,316.50. This is the amount paid for that portion of the R-w across the Common and does not include the compensation paid to individual land holders whose lots were crossed by the right of way and for which they were collectively paid more than \$8,000.00.

The Patent, however, covers the whole Right of Way.

[Document No. 174]

68. In 1955 and 1956, about 1350 acres of the Caughnawaga Indian Reserve were taken by the St. Lawrence Seaway Authority in order to construct the St. Lawrence Seaway Canal. Part of the right-of-way for the Canadian Light & Power Company's power transmission line was within the area taken by the Seaway Authority. [Documents Nos. 176, 177 and 178.]

In September of 1966, the Seaway authority transferred 10,968,901 square feet (about 252 acres) of the expropriated Caughnawaga lands to the Minister of Citizenship and Immigration, Indian Affairs Branch. [Document No. 181.] Another 553.193 acres were transferred to Indian Affairs in October 1976. [Document No. 183.] The property transferred by the 1966 and 1976 Orders-in-Council were returned to Indian reserve status by an Order-in-Council passed on October 12, 1978. [Document No. 185.]

The October 1976 and October 1978 Orders-in-Council defined the lands being transferred to reserve status by their SLS Lot numbers. The SLS lots over which the right-of-way to the Canadian Light & Power Company would appear to have traversed were numbers 16, 17 and 19. The CLSR plans showing these lots (58760 shows SLS 19 and 58613 shows SLS 16 and SLS 17) do not indicate that Hydro-Quebec continued to have any interest in those parcels following the seaway construction, despite the fact that the lands had been patented to them. (Sketch plan no. 2 at the beginning of this report illustrates the location of these SLS lots.)

69. The Quebec-Hydro Electric Commission, successors to the Canadian Light & Power Company, wrote to W. P. McIntyre of the Indian Affairs Branch on April 10, 1964, asking for information on the procedure to be followed in connection with a non-Native individual who wished to rent part of Lot 113 within the commission's right-of-way. [Document No. 179.] McIntyre replied a week later as follows:

...
The parcel of land coloured red on the plan received with your letter is within the area which was granted to the Canadian Light and Power Company by Letters Patent dated May 4, 1933. I expect your Commission is successor in title to the grantee.

The Letters Patent made an outright grant of the land to Canadian Light & Power and therefore you may deal with the land as you wish without obtaining the consent of this Department. However, I would point out that the grant was made for the purpose of an electric transmission line and if the grant was being made today it would be limited to an easement thereby retaining ownership of the land for the Indians with the right to use it insofar as use did not interfere with the easement.¹⁴

McIntyre went on to suggest that the Hydro Commission consult with the Caughnawaga Band Council on the matter so as "to avoid difficulty with the Indians". [Document No. 180.]

70. In a letter dated February 8, 1973, W. V. Lowry, Head, Land Transactions Section, Indian Affairs Headquarters, wrote to Mike Morris, District Superintendent, Montreal District, Indian Affairs, regarding the hydro line right-of-way shown on CLSR plan 1065. He indicated that if Hydro-Quebec was to relinquish their rights as successors to Canadian Light and Power Co., then any deed for that purpose would have to clearly relinquish all rights purported to have been transferred by the patent.

This is further to your conversation with our Mr. Menard on this subject. We enclose herewith copy of Order in Council P.C. 1362 dated June 8, 1911 and of Letters Patent (Reference 22523) dated May 5 [sic 4], 1933.

I assume that Quebec Hydro is to relinquish to Her Majesty the Queen in right of Canada its rights as successors to The Canadian Light and Power Company. May I point out that any deed for that purpose should be worded such as to relinquish all rights purported to have been transferred by the said Letters Patent. If the Letters Patent have ever been registered in the local Provincial Land Registry Office, the forthcoming deed should also be duly registered at the same place.

[Document No. 182]

No other documentation on the matter of a relinquishment by Hydro Quebec has been located.

71. In 1978, researchers working for the Confederation of the Indians Quebec, Kahnawake, conducted research into the right-of-way to the Canadian Light and Power Co., specifically regarding Block D, Lot 32 (this parcel can be identified on sketch plan no. 2 at the front of this report). A letter written at that time, dating from October 10, 1978, from Gaétan Pilon, Regional Supervisor, Lands Records & Registry, Indian Affairs, Ste. Foy, Quebec, to Steven O. Horne, Research Co-ordinator, Confederation of Indians of Québec, noted that

¹⁴ Again, as noted previously, Indian Affairs granted easements for transmission lines in the same time period that they granted the letters patent to the Canadian Light & Power Company. (An example of such an easement agreement at Six Nations is reproduced in Appendix C at the end of this report.)

Patent 22523 to Canadian Light and Power Co. showed that the company paid \$3,316.50 for whole of right-of-way through reserve.

...
Our records as well as Headquarter's records indicate that this right of way is no longer part of the reserve and that it is now owned by Quebec Hydro. This presumably being a consequence of the nationalization of the private sector about fifteen years ago.

You informed me that the powerline has not been in use for some time and that only the towers still stand today. I cannot find any reversionary clause in the Order in Council or in the letters patent, whereby the land for this right of way would automatically revert to the Caughnawaga Band should the right of way cease to be used for the purpose intended for.¹⁵

It is normal practice in such cases that negotiations with the expropriating company be initiated by the Band and/or the Confederation of Indians of Quebec in an attempt to have these lands returned to reserve status.

[Document No. 184]

72. Currently, Hydro-Quebec claims to have the property rights for this transmission line, commonly referred to as Line 4. They have indicated that the right-of-way for the line is now partially used for a 25 kv distribution network. [Document No. 187.] Sketch plans nos. 3 and 4 at the beginning of this report show the course of this transmission following the seaway construction.
73. On October 24, 1996, Sophie Yale, Notary, Civil Litigation and Real Property Law (Quebec) Section, INAC, wrote a legal opinion concerning the status of the line under consideration in this report, referred to as Line 4, as well as an additional transmission line at Kahnawake (namely Line 2). The memo was addressed to Yves Cazalais, Legal Advisor, INAC, Quebec. The following is a translation of Yale's memo.¹⁶

This is in response to the correspondence exchanged on the aforementioned matter. The Department of Indian Affairs and Northern Development Canada would like to know the rights held by Hydro-Québec on the Kahnawake Indian reserve, more specifically regarding transmission lines 2 and 4.

To this end, we have begun studying documents provided to us and examining the titles to the Kahnawake reserve, known and designated as lot 1, land register of the Domaine de la seigneurie de Sault St-Louis. Martine Valiquette, our office's notary, went to the registry office in the registration division of Laprairie on October 3 and 4, 1996 to do the necessary research.

... [Line 2] ...

Line 4

The order-in-council P.C. 1362 of June 8, 1911 approved the acquirement of a right of way by Canadian Light and Power Company of Montreal. The minister recommends that "under the provisions of section 1 of An Act to amend the Indian Act, authority be given for the acquirement of the said Company of the right of way referred to, upon such terms as may be agreed upon. The Committee submit the same approval."

Section 1 of An Act to amend the Indian Act stipulates that:

¹⁵ Recall that the Band Council had passed a resolution that the common lands taken for the transmission lines should revert back to the band upon the expiry of the charter of the Canadian Light & Power Company. The resolution was not forwarded to Headquarters until after the passage of the Order-in-Council authorizing the taking of the lands.

¹⁶ Both the translation and the original French version of the opinion have been included in the collection of documents submitted with this report. [Document No. 188.]

"No part of a reserve can be taken for the needs of a railway, road, public work, or work intended for some public use without the consent of the Governor in council, but any company or any municipal authority having the statutory power, be it federal or provincial, to take and use the lands or some interest in the lands, without the consent of the owner, can, with the consent of the Governor in council as aforesaid, and subject to the terms and conditions imposed by this consent, exercise this statutory power with respect to any reserve or a part thereof ..."

Following this authorization, the Canadian Light and Power Company of Montreal should have proceeded with the expropriation of the right of way.¹⁷ An indemnity was paid to the Department of Indian Affairs for the Band Council's account. However the Federal Crown then issued letters patent under the number 22523, dated May 4, 1933. According to the terms of these letters patent, the Crown, Canada's head of state, assigned and transferred to Canadian Light and Power Company of Montreal the parcels of lands described therein. Ms. Valiquette discovered that these letters patent were not published.

We must verify whether the Federal Crown could claim to have a right of ownership on these parcels of lands. Ms. Valiquette did not find any right of ownership in the name of Her Majesty the Queen, the head of state. Consequently, the letters patent could not, in our view, confer any right of ownership to the company. Ms. Valiquette also found an interesting document filed in the Book of Reference of Lot 1 of the cadastral survey of the Domain de la seigneurie de Sault St-Louis. It was a letter from the Department of Indian Affairs and Northern Development dated July 27, 1933 and a form entitled "Return of Indian Lands." The purpose of this form was to return the Indian lands of Laprairie, for which the letters patent were issued to Canadian Light and Power Company on May 4, 1933. We enclose a copy of this letter and form. Apparently, the purpose of the form was to annul the letters patent that had been issued a few weeks before.¹⁸ Finally, it should be noted that a good number of plans were filed by the Department of Natural Resources Canada (Canada Land Surveys Record) with the land register of lot 1 of the cadastral survey of the Domaine de la seigneurie de Sault St-Louis. Ms. Valiquette noted that several of these plans mention or show Hydro-Québec power transmission lines. These plans also sometimes make reference to plans #1065 and #M2364 accompanying the aforementioned federal orders-in-council P.C. 1362 and 1141 relative to transmission lines 2 and 4. However, even though these lands cannot be those constituting power transmission lines numbers 2 and 4, Ms. Valiquette also noted that some lands appeared as "expropriated" to Canada plan 5070 - Indian Affairs Surveys Records - File 21412 - May 5, 1959.¹⁹

In conclusion, we have learned from our research at the registry office of the registration of Laprairie that no expropriation procedure was registered there. Can we consider that registration of these procedures with the registry office was not required, considering the exclusive legislative jurisdiction of the federal Crown over lands reserved to Indians and, consequently, that filing a plan or other document with the Registry of the Department of Indian Affairs and Northern Development was sufficient? Since this question falls more under your jurisdiction, I would appreciate having your opinion on this matter.

Even though this letter does not provide a definitive solution, I believe that it contains the information you will need to meet with representatives of Hydro-Québec. At that meeting, they should be presenting their position and, if necessary, provide additional information on the rights that they are revendicating [sic] and the documents or provisions on which they base their claims.

[Document No. 188]

¹⁷ Footnote in opinion reads: This company had the power to expropriate in accordance with An Act to amend the charter of the Canadian Light and Power Company, S.O., George V., c. 76.

¹⁸ It seems that Ms. Yale misunderstood the meaning of the word "Return". The return in question is simply a listing or schedule of the Caughnawaga land which had been patented. It was sent by Indian Affairs to the Laprairie Registry office so that the Registrar would be made aware that letters patent had been issued to Canadian Light & Power. [See Document No. 168.]

¹⁹ The lands in question were expropriated for approaches to a highway.

Appendix A
Acreage Figures from CLSR Plan 1065

Lot No	Owner	Area (Square Arpents)	Remarks
129	Baptiste de Lorimier	3.27	
130A	" "	1.45	
130	" "	3.47	Total Area = 8.19 sq. arp.
130	Jos Reid	0.31	
137	" "	1.69	
135	" "	3.31	Total Area = 5.31 sq. arp.
149	Michel O. Phillips	4.29	
149	Michel Montour	0.52	
158	"	0.35	Total area = 0.87 sq. arp.
158	Michel O. Phillips	0.86	
	" "	3.04	
113	Michel O. Phillips	0.19	Total area = 8.38
113	Heirs Francois Delisle	0.94	
113	"	2.07	
163	"	0.48	Total area 3.49 sq. arp.
163	Agnanoni D'Ailleboust	0.37	
164	"	0.66	
166A	"	0.40	Total area 1.43 sq. arp.
166A	Michel Martin	2.17	
166	"	2.50	Total area = 4.67 sq. arp.
174	Michel Phillips	0.38	
173	"	1.93	
101	"	0.14	Total area 2.45 sq. arp.
101	Thomas Bruce	2.70	
101	"	0.59	Total area 3.29 sq. arp.
101	Heirs Baptiste Jacks	1.59	
182	"	1.54	
187	"	2.86	
187	"	3.36	Total area = 9.35 sq. arp.
97	Jos. Deer	3.00	
	The Common	5.83	
	"	0.71	
	"	8.35	Total area = 14.89 sq. arp.
	John Canadien	0.01	
Grand Total		65.33 sq. arp.	

Appendix B
Acreage Figures from CLSR Plan M1065A

Lot No	Owner	Area (Square Arpents)	Remarks
129	Baptiste de Lorimier	3.27	
130A	Franck Beauvais	1.45	[Now?] Jos Cross the River
130	Jos Rice	3.47	
130		0.31	Total area = 3.78 sq. arp.
137	Peter Zacarie	1.69	
135	Heirs Jos Stacey	3.31	
149	Michel Montour	4.29	
149	Michel O. Phillips	0.62	
158	"	0.35	
158	Michel Montour	0.86	Total area 5.15 sq arp
157	Michel O. Phillips	3.04	Total area 3.91 "
113	Heirs Francois Delisle	0.19	
113	Heirs Francois Delisle	0.94	
113	Heirs Francois Delisle	2.07	
163	"	0.48	Total area 3.68 sq. arp.
163	Jos. D'Ailleboust	0.37	
164	"	0.66	
166A	"	0.40	Total area 1.43 sq. arp.
166A	Michel Martin	2.17	
166	"	2.50	
174	Michel Phillips	0.38	
173	"	1.93	Total area 2.31 sq arp
108	Michel Martin	0.14	Total area 4.81 sq. arp.
101	Thomas Bruce	2.70	
101	"	1.59	
101	Thomas Bruce	0.59	Total area 4.88 sq. arp.
182	Heirs Baptiste Jacks	1.54	
187	"	2.86	
187	Heirs Baptiste Jacks	3.36	7.76 sq. arp.
97	Jos. Deer	3.00	
	Total	50.53	[note: amt. does not incl. common lands or Big John Canadien's property]

Appendix C

SIX NATIONS I.R. NO. 40 POWER TRANSMISSION LINE EASEMENT

[The documents discussed below are included in the collection of documents submitted with this report. See Document No. 186.]

THIS INDENTURE made in quadruplicate, the first day of October in the year of our Lord one thousand nine hundred and twenty-nine,

BETWEEN:

HIS MAJESTY KING GEORGE THE FIFTH, represented by the Superintendent General of Indian Affairs,
hereinafter called the Grantor,
- OF THE FIRST PART -
-and-
THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
hereinafter called the Grantee,
-OF THE SECOND PART-

WHEREAS the Grantee is about to erect a transmission line or lines through the Six Nations Indian Reserve in the Townships of Tuscarora and Oneida in the County of Brant in the Province of Ontario;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of SEVEN THOUSAND SIX HUNDRED AND TWENTY-SIX DOLLARS AND FORTY-FIVE CENTS (\$7,626.45) of lawful money of Canada now paid by the said Grantee to the said Grantor (the receipt whereof is hereby acknowledged) the said Grantor doth grant unto the said Grantee the right, privilege and easement to use and occupy for the purposes of the Grantee for a period of thirty years from the date hereof certain lands and premises in the said Indian Reserve in the said County, containing by admeasurement 117.33 acres, which may be more particularly described as a strip of land one hundred feet in width, being fifty feet in width on either side of the Grantee's said transmission line and extending through the said Indian Reserve, being the lands and premises set out in Schedule "A" herein and shown on Plan numbered 7360 E.T. recorded in the Surveys Branch of the Department of Indian Affairs under M 2333.

AND without limiting the generality of the foregoing the Grantee shall be entitled to the following rights:-

- (a) To erect, maintain and operate a transmission line or lines and transmit electricity, and for such purpose to erect and maintain all such poles, towers, anchors, guys, braces, wires, conductors and other works as the Grantee may from time to time deem necessary;
- (b) To repair, inspect, alter, reconstruct, remove and/or renew its said works or any of them;
- (c) To keep the said lands clear of all buildings, erections, and structures and also clear of all such trees and brush as the Grantee may deem necessary;
- (d) To trim all trees on any adjoining lands which in the opinion of the Grantee may interfere with or endanger the works or operations of the Grantee or with the rights herein granted;
- (e) By its officers, agents servants and workmen to enter upon, pass and repass on or along the said lands at any and all times, on foot or with vehicles for any of the purposes of the Grantee.

The Grantee covenants and agrees to permit the crossing, entering upon, pasturing and cultivating of so much of the said lands as is not occupied by the works of the Grantee, by all persons entitled so to do and to similarly use the adjoining lands but only upon condition that all such person crossing, entering upon, pasturing and cultivating the said lands do so entirely at their own risk, and that the Grantee shall not be liable for any damage or injury to persons or property occasioned thereby;

AND the Grantor covenants and agrees to indemnify and save harmless the Grantee from all claims and actions, costs, charges and expenses arising therefrom or in connection therewith.

THE said Grantor covenants with the said Grantee that he has the right to convey the rights hereby granted in the said lands to the said Grantee notwithstanding any act of the said Grantor.

AND that the said Grantee shall have quiet possession of the said lands.
The title to all works and equipment on the said lands shall remain in the Grantee.

THE rights herein granted shall be renewable for a further term of thirty years upon ninety days' notice in writing to the said Grantor.

THE burden and benefit of this Indenture shall extend to, be binding upon and enure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the said parties hereto have hereunto caused their corporate seals to be affixed, attested by the hands of their proper officers on their behalf.

... [signatures of Deputy Superintendent General of Indian Affairs, and the Chairman and Secretary of the Hydro Electric Power Commission of Ontario, executed from September-December 1932] ...

[Schedule A is a listing of names of proprietors, lot and concession numbers, townships, acreages]

The above cited easement agreement was renewed on December 21, 1961 (effective from October 1, 1959, the date of expiry of the above cited agreement). The renewal was for a period of 20 years (i.e., to terminate September 30, 1979) and involved a compensation payment of \$9,868.00. According to Six Nations Council, this renewal was approved by the elected council of the Six Nations and the locatees affected by the right-of-way. A further 10 year renewal was made for the period up to September 30, 1979. The renewal was approved by Six Nations Council.

A subsequent, recent renewal was made in July 1994 (effective from September 30, 1989) for a five year period, with an allowance for a further five year period. (This "permit" was in the form of a tri-partite agreement, the parties being the Minister of Indian Affairs and Northern Development on behalf of Her Majesty the Queen, *and* the Elected Council of the Six Nations of the Grand River Band of Indians *and* Ontario Hydro.)

Once again, the documents referred to in this appendix are provided with the collection of documents submitted with this report. [See Document No. 186.]