INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

RUBY RIVER CAPITAL LLC

Claimant

v.

CANADA

Respondent

(ICSID Case No. ARB/23/5)

MEMORIAL ON JURISDICTION AND THE MERITS

***Counsel for Claimants*:**

Christophe Bondy
Alexandre Genest
Michael Lee
Emmanuel Giakoumakis
Letizia Busso
Lindsey Dimond
Steptoe & Johnson, UK LLP
5 Aldermanbury Square
London, EC2V 7HR
United Kingdom

Chloe Baldwin
Claire Schachter
Steptoe & Johnson LLP
1330 Connecticut Avenue NW
Washington, D.C. 20036

Page intentionally left blank

TABLE OF CONTENTS

1. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the **ICSID Convention** or **Convention**), Annex 14-C of the United States-Mexico-Canada Agreement (**USMCA**), Articles 1117(1) and 1120 of the North American Free Trade Agreement (**NAFTA**), and in accordance with Procedural Order No. 1 dated 23 August 2023, Ruby River Capital LLC (**Ruby River** or **Claimant**) hereby submits, on behalf of Symbio Infrastructure Partnership Limited (**Symbio**), this Memorial on Jurisdiction and the Merits in this arbitration proceeding against the Government of Canada (**Respondent** or **Canada**) concerning the claims stated herein.

I. INTRODUCTION

2. The Symbio Project was comprised of a state-of-the-art, carbon-neutral liquefied natural gas (**LNG**) facility in the region of the Saguenay, Québec (the **GNLQ Project**) and a natural gas transmission line connecting existing natural gas infrastructure in Northern Ontario to the GNLQ Project facility (the **Gazoduq Project**). The Symbio Project would have made significant contributions to addressing climate change, confirmed Canada's worldwide leadership role as a reliable source of sustainable energy, brought enormous economic benefits to Québec and to Canada, and created one of the most significant pan-Canadian industrial collaborations yet achieved. Yet the Project was ultimately destroyed by the concerted, unprincipled, illegal and bad faith measures of both Québec and Canada, in violation of protections guaranteed to NAFTA investors.

3. Symbio's core concept was to use renewable electricity to power the liquefaction processing of Western Canadian natural gas at a highly attractive, cost-competitive, and low-ambient temperature location in Saguenay, Québec, and ship the resulting LNG via the St Lawrence Seaway to markets around the world.

4. Powered by renewable energy (unlike most LNG plants which rely on fossil fuels), the Saguenay liquefaction plant was designed to emit the lowest possible GHG emissions of any such facility operating at a large-scale, by a significant margin. The LNG produced by the Project would in turn displace higher polluting sources of energy in markets around the world, notably coal and heavy fuel oil.

5. Overall, the Project would set a new benchmark in environmental performance while making a substantial contribution towards the worldwide energy transition, in a way that was practical and realisable.

6. Québec and Canada for years strongly encouraged Symbio's plans. Both governments individually and collectively incited Symbio to pour US$ 120M and over eight years of work, time and effort into making the Project a reality. Both governments repeatedly assured Symbio that the Project aligned with Québec and Canadian industrial and environmental policy – notably, promotion of LNG as a key element in the energy transition, and use of the Saguenay River and St Lawrence Seaway as vectors for Québec's economic development.

7. Québec also assured Symbio that environmental review of the Project would be principled and lawful. Indeed, environmental consciousness was built into the Project's DNA: Symbio

consistently went above and beyond in its environmental commitments, pushing the boundaries of sustainable and responsible operations.

8. By early 2020 the Project had completed a six-year environmental review process and was about to conclude a fourth phase of financing. As of this point, Québec's actions towards the Project took a turn for the worse.

9. First, in March 2020 Québec deliberately leaked news of the pull-out of a major investor who had been spooked by Canada's failure to protect its transportation infrastructure from illegal protests unrelated to the Project. Québec's targeted effort to harm the Project cast doubt on its prospects amongst the public and put Symbio at a material disadvantage in seeking new financing.

10. Next, Québec conducted a procedurally abusive public consultation on the Project, which flowed from its own prior unconstitutional assertion of jurisdiction over the environmental review more generally. Québec then took the result of that flawed consultation and, in violation of Québec law, in March 2021 suddenly devised three "core criteria" it claimed were necessary for Project environmental approval, the scope of which it refused to explain, and urged Symbio quickly to generate a response. Suddenly put to the task of complying with these new "core criteria", the Project continued to engage with the Québec Government and submitted ample evidence that it had gone above and beyond what was required to comply with the environmental stands that were unilaterally imposed by Québec.

11. By June 2021, Québec's own in-house experts declared that Symbio's Project fulfilled even these newly-imposed criteria. Regardless, Québec senior politicians simply ignored these results and, in July 2021, denied the Project's approval, declaring both the GNLQ and the Gazoduq Projects dead (despite the fact that environmental review of the latter was still underway).

12. The grounds Québec invoked to dismiss the Projects had never before or after been applied to any Project in Québec. The Québec Government held Symbio to standards far more harsh than in their environmental review of projects raising similar issues and invoked factors not even considered in the review of other like projects. Québec's denial also relied on reasoning fundamentally at odds with the Province's longstanding policy support for LNG as an essential support in the energy transition, and of the Saguenay and St Lawrence Rivers as vectors for Québec's economic development.

13. Moreover, as Symbio subsequently has determined, the decision was taken on grounds that were not even legally within the four corners of Québec's decision-making power and outside of the constitutionally-mandated scope of the provincial review, as Québec must have known at the time.

14. Next, in a knee-jerk reaction, Canada upended its own ongoing environmental review process. In patent violation of natural justice, and clearly aping Québec's decision, in September 2021 the Prime Minister's spokespeople declared Canada would never grant the Project approval. The announcement came months before that determination was to be made by the relevant federal authorities and before the publication of their decision.

15. In February 2022 Canada formalised an environmental refusal that had already become a *fait accompli*. Canada's decision was equally fatally flawed, relying on factors that expressly had been excluded from the scope of federal decision-making.

16. In the year following Québec and Canada's politically-motivated refusal of the Project, the bad faith and patent illegality of their decisions became clear, as a raft of senior politicians candidly confirmed, in numerous separate exchanges with senior Symbio leadership, that environmental considerations had never posed a true impediment to the Project. Only Québec and Canada's sparring over who should take the blame blocked a reversal of the earlier provincial and federal decisions.

17. All in all, both the provincial and federal decisions were marked by gross procedural injustice, were issued on manifestly arbitrary grounds, amounted to improper negative targeting of Symbio, and totally upended Symbio's reasonable expectations that the decision-making process would be unbiased, science-driven, and would reflect Québec and Canada's longstanding encouragement of the Project. As such, the measures at issue violated NAFTA Article 1105(1) (Minimum Standard of Treatment).

18. Québec and Canada also subjected Symbio to treatment less favourable than that accorded both to Canadian investors and to investor of third parties and their investments in the conduct of their respective environmental reviews, in violation of NAFTA Articles 1102 and 1103. In particular, they assessed and rejected the GNLQ Project by reference to harsh, inconsistent and often unpredictable criteria, which they applied in much a much more lenient manner to other comparable projects in like circumstances.

19. The decisions by Québec and by Canada wrongfully refusing the Project environmental approval had the effect of wiping out the value of Symbio's investment, in a manner that violated Article 1105 of the NAFTA; was discriminatory; did not pursue a legitimate public policy objective; and for which Symbio received no compensation. As such, the measures amounted to an unlawful indirect expropriation, which stands to be compensated on the basis of the lost fair market value of the investment at the date of the award.

20. As a result of the measures for which Canada is responsible under international law, Symbio suffered losses including the destruction of in value of its investment, its subsidiaries' lost profits, related interest and costs, which are conservatively estimated at US$ 1,004,648,000.

21. Together with this Memorial, the Claimant submits the following witness statements:

    a. Witness statement of Jim Illich, signed 21 November 2023 (**CWS-1**);

    b. Witness statement of Vivek Bidwai, signed 21 November 2023 (**CWS-2**);

    c. Witness statement of Tony Le Verger, signed 21 November 2023 (**CWS-3**);

    d. Witness statement of Keith Bainbridge, signed 20 November 2023 (**CWS-4**);

    e. Witness statement of Ron Brintnell, signed 20 November 2023 (**CWS-5**); and

f. Witness statement of Denis Roux, signed 21 November 2023 (**CWS-6**);

22. The Claimant further submits the following expert reports:

a. Expert Report of Ms. Christine Duchaine, Managing Partner at Sodavex, signed 21 November 2023 (**CER-1**);

b. Expert Report of Mr. Rodney Northey, Partner at Gowling WLG, signed 21 November 2023 (**CER-2**); and

c. Expert Report of Secretariat International Advisors LLC, signed 21 November 2023 November 2023 (**CER-3**).

23. This Memorial is accompanied by Exhibits **C-0041** to **C-0412** and by legal authorities **CL-006** to **CL-0142.**

II. FACTUAL BACKGROUND

A. The Projects arose from a desire to make a positive contribution to energy transition

24. The Symbio Project sought to realise a world-class natural gas liquefaction and export terminal facility in Saguenay, Québec, linked to existing energy resources in Western Canada. One of the Claimant's main investors, Freestone International LLC (**Freestone**), launched the GNLQ Project in 2013,[1] and together with other partners and stakeholders diligently pursued the investment over a period of eight years, spending more than US$ 120 million in the process,[2] until its plans were ultimately destroyed by the Government of Québec and by the Federal Government of Canada's measures.

25. The Symbio Project was set to be one of the most energy-efficient, sustainable and lowest-GHG-emitting liquefaction facilities of natural gas in the world,[3] providing Canadian energy to international markets, generating enormous economic benefits to the Claimant and to Canada,[4] Québec, and Indigenous communities, while making a material contribution to the worldwide transition away from more highly carbon-intensive fuels and providing energy to meeting growing global demand.

26. With the Québec Government's approval, the Project's main power source for liquefaction was to be hydro-electricity, making it one of the greenest, most energy-efficient LNG producers in the world. The planned liquefaction facilities had a production capacity of about 11 million tons per year (**mtpa**), enough to provide energy to replace about ten large coal-fired power plants.[5]

27. The Project included the creation of port infrastructure for liquefaction, marine tanker loading of LNG, storage tanks and related support infrastructure. Maritime transport of LNG was to take place via customised carrier vessels travelling through the Saguenay River and

---

1 GNLQ publicly launched the Project on 19-20 June 2014 at an event in the City of the Saguenay in the presence of senior political figures of the region. The event resulted in positive feedback from radio, newspapers and main stakeholders. *See* Freestone, "LNG Québec | Énergie Saguenay – Quarterly Status Report" (1 September 2014), **Exh. C-0041**, p. 1; Énergie Saguenay, "Media Report on launching" (June 2014), **Exh. C-0042**.

2 *See* **Section III.D** below.

3 *See* WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, p. 1; GNL Québec, "Énergie Saguenay Project Governance Policy" (August 2019), **Exh. C-0044,** p. 9, Sustainable Development Policy, Principles, point 3. *See also* Witness Statement of Jim Illich (21 November 2023), Section III and Section IX.B **CWS-1**. As stated in GNLQ's public announcement of 14 February 2019, GNLQ's goal was to develop "the most innovative and sustainable natural gas liquefaction facility in the world" and to achieve its zero-carbon goal through the reduction of GHG emissions and GHG emission offsets. *See* Énergie Saguenay, Press Release "Énergie Saguenay undertakes to becoming Carbon Neutral" (14 February 2019), **Exh. C-0045**. In February 2021, Gazoduq also confirmed its intentions to aim for net-zero emissions. *See* Gazoduq, "Gazoduq Confirms its Intention to Aim for Net Zero Emissions" (4 February 2021), **Exh. C-0046**.

4 Mallette, "Étude De Retombées Socio-Économiques Rapport Final - GNL Québec – Projet Énergie Saguenay » (26 October 2018), **Exh. C-0047**, pp. 40 *et seq.*

5 GNL Québec, « Présentation du Projet Énergie Saguenay et de ses impacts », **Exh. C-0048**, slide 6.

down the St. Lawrence Seaway—about 160 shipments each year, or roughly one ship every two days, transporting LNG on to markets in Europe and Asia. The GNLQ facility was projected to operate for a minimum of 25 years and up to 50 years in total.[6]

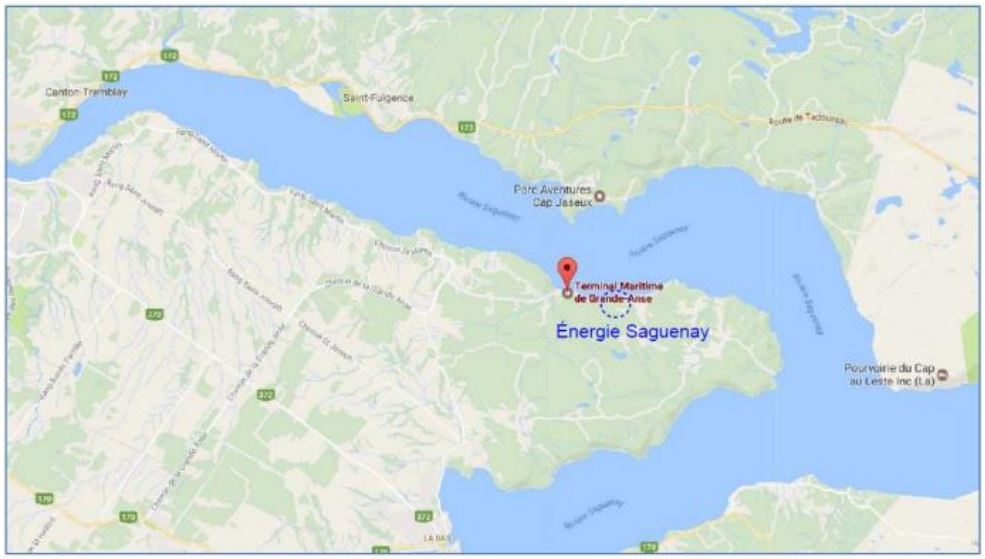


Figure 1 - Site Location of Grande-Anse Terminal (Exh. C-00326, page 6)

Figure 2 - Computer Generated Image of the Project (To be uploaded, Slide 13)[7]

6 Énergie Saguenay, "Énergie Saguenay Project: Natural Gas Liquefaction Complex in Saguenay Project Description – Summary" (November 2015), **Exh. C-0049**, p. 23. *See also* WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, p. 57, section 3.1.

7 GNL Québec, « Présentation du Projet Énergie Saguenay et de ses impacts », **Exh. C-0048**.

28. The Symbio Project was aligned with the global transition towards cleaner energy, as part of the fight to mitigate and address climate change. One of the primary sources of global greenhouse gas (**GHG**) emissions is the operation of coal-fired electricity generation facilities: switching from coal to natural gas is a "quick win" for emissions reduction, as it results in a substantially lower CO_2 emissions compared to conventional coal combustion.[8] LNG is recognised worldwide as a key "transition" energy, helping accelerate the move to carbon-neutral economies, while supplying crucial energy needs.[9] By bringing to the market an abundant new source of LNG produced in environmentally optimal conditions,[10] the Symbio Project was poised to make a substantial contribution to the reduction in GHGs, facilitating the shift away from coal and other more carbon-intensive energy sources.

29. The Project's significant contribution to carbon-neutrality and to the mitigation of climate change was perfectly aligned with the longstanding and continuous endorsement of LNG as a transitional form of energy on the part both of the Province of Québec and of the Federal Government,[11] as reflected in repeated policy statements and endorsements by Prime Minister Justin Trudeau[12], Québec Premier Philippe Couillard,[13] and his successor Québec

---

8 *E.g.* International Environmental Agency, "The Role of Gas in Today's Energy Transitions" (IEA 2019), **Exh. C-0050,** p. 4 ("The clearest example is the 'quick win' for emissions from running existing gas-fired plants instead of coal-fired plants to generate electricity. We estimate that up to 1.2 gigatonnes of CO2 could be abated in the short term by switching from coal to existing gas-fired plants, if relative prices and regulation are supportive. The vast majority of this potential lies in the United States and in Europe ... so would bring down global power sector emissions by 10% and total energy-related CO2 emissions by 4%. . . On average, coal-to-gas switching reduces emissions by 50% when producing electricity and by 33% when providing heat.") *See also* United States Environmental Protection Agency, "Sources of Greenhouse Gas Emissions", Exh. C-0051 ("Coal combustion is more carbon-intensive than burning natural gas or petroleum for electric power production . . . coal use accounted for 59% of CO2 emissions from the sector")

9 *E.g.* Énergie Saguenay, "Énergie Saguenay Project: Natural Gas Liquefaction Complex in Saguenay Project Description – Summary" (November 2015), **Exh. C-0049**; WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, section 1.2, pp. 5 *et seq*.

10 On this point, it is important to note that methane (CH_4) is a greenhouse gas (GHG) with a global warming potential far greater than carbon dioxide (CO_2). Since 2018, Canada has taken key mitigation actions to reduce methane emissions from the production of oil and gas by approximately 40% by 2025, as compared to 2012-levels through innovative green technologies to prevent fugitive methane from natural gas extraction, venting, flaring and stationary combustion. *See* Environment and Climate Change Canada, "Faster and Further: Canada's methane strategy" (September 2022), **Exh. C-0052**, pp. 14-17. In March 2022, the Oil and Gas Climate Initiative, comprised of major international oil and gas companies, also announced a target of near-zero methane emissions from gas production by 2030, "OGCI members aim for zero methane emissions from oil and gas operations by 2030".

11 *See* Witness Statement of Jim Illich (21 November 2023), Section IV, **CWS-1**.

12 *See, e.g.*, Prime Minister of Canada Justin Trudeau, "Prime Minister Trudeau delivers remarks about LNG Canada's $40 billion investment" (2 October 2018), **Exh. C-0053** ("We know LNG produces about half the amount of carbon emissions as coal. So by sending Canadian LNG to markets that are today powered by coal, we will help those jurisdictions transition away from this energy source.")

13 *See, e.g.*, the statements made by Philippe Couillard during his term as Premier of the Province of Québec on Radio Canada (30 September 2014), **Exh. C-0054** (« Notre gouvernement envoie un signal fort pour favoriser l'attrait d'investissements chez nous, a ajouté le premier ministre. Non seulement nous posons un premier geste pour répondre à une demande croissante dans le secteur du gaz naturel liquéfié, notamment sur la Côte-Nord, mais nous positionnerons également le Québec comme lieu privilégié pour les investisseurs qui souhaitent profiter des occasions de développement du Plan Nord et de la Stratégie maritime. ») ; and at the radio show *L'Heure de Pointe* on ICI Radio-Canada Saguenay (21 December 2015), **Exh. C-0055** ("Le gaz naturel a encore de l'avenir comme énergie de transition. Moi je crois que d'ici la fin du siècle, on aura une économie en terme énergétique totalement transformée avec beaucoup moins ou presque plus du tout d'hydrocarbures, mais le gaz naturel va nous permettre d'assurer cette transition là. Donc l'avenir est bon pour les prochaines

Premier François Legault.[14] Both the Provincial[15] and the Federal[16] Government have consistently acknowledged that LNG displaced more polluting forms of fuel such as coal.[17] The Projects therefore not only were consistent with government policy, but proactively furthered repeatedly affirmed Canadian and Québec policy goals.

30. In addition to its liquefaction facility and related port terminal, the Claimant foresaw from the start the need to construct a pipeline that would link existing natural gas infrastructure in Western Canada to GNLQ's liquefaction facility in the Saguenay region. After extensive due diligence and discussion with major pipeline developers in Canada, in late 2017 the Claimant decided the best course was to pursue this aspect of its plan in-house, as the Gazoduq Project: a complementary project to construct and operate a natural gas transmission line approximately 780 km long from north-eastern Ontario to the GNLQ Project site in the Saguenay region.[18] Gazoduq's infrastructure was designed to transport natural gas produced in Western Canada to the GNLQ liquefaction facility. The Gazoduq Project was projected to be in operation for at least 25 years and up to 50 or more years to

---

décennies pour le gaz naturel.") *See also* the remarks made by Premier Couillard at the radio show *Le Show du Matin*, on KYK Saguenay (on 16 February 2016) (audio - **Exh. C-0056**) (transcript - **Exh. C-0057**) ("on considère le gaz naturel comme une forme d'énergie de transition qui est très importante, notamment le gaz naturel liquéfié.")

[14] *See, e.g.* statement by Premier Legault before the National Assembly of Québec in response to the leader for the second group for the opposition Manon Massé (3 June 2019), **Exh. C-0058** (M. Massé : « . . . GNL Québec est incompatible avec la nécessaire transition énergétique et, de ce fait, la rejeter? » M. Legault : « M. le Président, GNL, c'est un projet important. C'est un projet qui, au total, va réduire les GES sur la planète. Et ça, c'est important de le dire, là, parce qu'on ne peut pas laisser les gens dire n'importe quoi sur l'impact sur les GES, incluant le député de Jonquière. M. le Président, le projet, en quelques mots, c'est de prendre du gaz naturel qui vient de l'Ouest canadien, de le liquéfier à Saguenay et de l'exporter en Europe pour remplacer du mazout et du charbon. Au total, on parle d'une réduction très importante des émissions de GES pour notre planète. Donc, M. le Président, c'est un projet important. ») . *See also* similar statements made before the National Assembly on 12 June 2019, **Exh. C-0059**; on 17 September 2019, **Exh. C-0060**, on 4 February 2020, **Exh. C-0061**.

[15] *See, e.g.* observations made by the Minister of Sustainable Development, Environment, and the Fight Against Climate Change David Heurtel at the Québec National Assembly (April 2016), **Exh. C-0062** (« oui, le gaz naturel peut être une alternative intéressante pour les énergies à plus fortes émissions carbone comme le mazout, par exemple . . . il faut bien comprendre que notre utilisation de gaz naturel, et plus particulièrement la question du gaz naturel liquéfié, s'inscrit dans une stratégie plus globale qui vise ultimement à atteindre les objectifs de réduction d'émissions de gaz à effet de serre ») ; and the remarks made by Pierre Arcand, Minister of Energy and Natural Resources and Minister responsible for the Northern Plan: Energir, "Liquefied natural gas deliveries start to the Stornoway Renard diamond mine in Northern Quebec, 1,040 kilometers from Montreal" (13 June 2016), **Exh. C-0063** ("Natural gas is a profitable transition energy that will play an important role during the next few decades in supporting the economic development and competitiveness of our companies").

[16] *See e.g.* Letter sent by The Honourable Seamus O'Regan, P.C., M.P., Canada's Minister of Natural Resources to Mr. Jim Illich President, LNG Quebec GP Inc. (22 May 2020), **Exh. C-0064** ("We recognise the potential these two projects have to support the global transition to a low-carbon economy, allow for the export of western natural gas as well as bring economic benefits to Quebec. Canada is working to advance clean energy technology to support our goal of achieving net-zero carbon emissions by 2050, and we recognise that our energy sector has a significant role to play. The production of cleaner sources of energy, including liquefied natural gas, can contribute to displacing higher-emitting energy sources such as coal."). *See further* remarks by Canadian Minister of Finance Chrystia Freeland, in The Energy Mix, "Canada Will Support 'Economically Feasible' LNG, Freeland Says" (16 October 2022), **Exh. C-0065**: LNG "is an important transition fuel . . . and we will always be looking at economically viable LNG projects."

[17] Government of Canada News Release. "Government of Canada confirms support for largest private investment in Canadian history" (24 June 2019), **Exh. C-0066**.

[18] *See* **Section II.H** below.

reflect the duration of the Symbio Project.[19] The Symbio Project therefore foresaw an integrated delivery corridor bringing Western Canadian natural gas directly to the GNLQ facility, where it would be liquefied, transferred to specially-designed ships, and sold on to markets around the world.

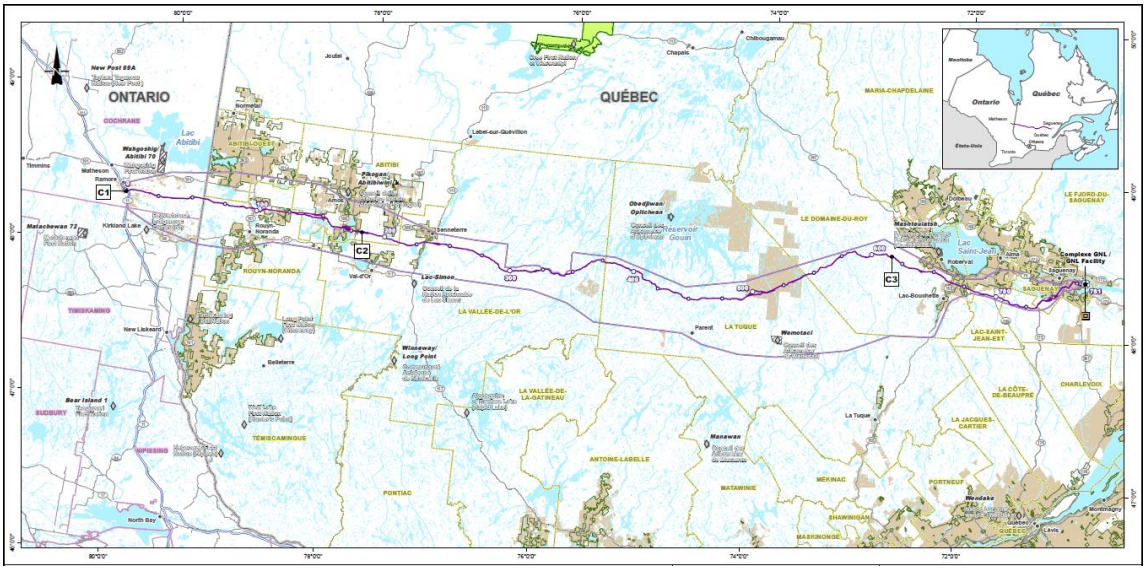


Figure 3 - Overview of the Gazoduq projected route (Exh. C-00327, page 61)

31. As the Symbio Project proceeded, its leadership took the further, unprecedented step of committing to net-zero impact on Québec's GHG emissions footprint throughout its construction and operating lifespan.[20]

B. The GNLQ and Gazoduq Projects would have been amongst the largest private industrial projects in Québec's history

32. The Symbio Project would individually have been among the largest private industrial projects in Québec's history. Symbio estimated that construction of the GNLQ Project would require a Can$ 9 billion investment (US$ 7.2 billion), and that construction would extend over a five-year period.[21] Symbio further estimated that construction of the Gazoduq Project would require a separate investment of Can$ 5 billion (US$ 4 billion), with

---

19 Gazoduq, Detailed Project Description submitted to the Impact Assessment Agency of Canada, (January 2020), **Exh. C-0067.**

20 *See* Énergie Saguenay, Press Release "Énergie Saguenay undertakes to becoming Carbon Neutral" (14 February 2019), **Exh. C-0045**; *See* Gazoduq, "Gazoduq Confirms its Intention to Aim for Net Zero Emissions" (4 February 2021), **Exh. C-0046**; GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answers R-25 and R-26, p.66 ("GNLQ s'engage aussi … à compenser les émissions directes de la construction du complexe …").

21 E.g. WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, pp. 1 and 319.

construction lasting up to three years, in parallel with the construction of the GNLQ Project.[22]

33. Based upon financial modelling as of 2021, the GNLQ Project alone was projected to generate a total after tax net profit to investors of no less than US$ 16 billion over its initial 25-year operating period.[23] The Gazoduq Project was projected to generate a total after tax net profit to investors of no less than US$ 4 billion during its initial 25-year operating period. Based on conservative assumptions predating the recent surge in prices on the LNG market (due to growing LNG demand following Russia's illegal invasion of Ukraine), as of 2021 the Symbio Project was reasonably projected to generate collective after tax net profits totalling no less than US$ 20 billion.

34. The Symbio Project was also set to be a major driver for the development of the Province of Québec as a whole. According to Symbio's estimates, construction of the liquefaction facility and related port infrastructure would generate over 4,500 direct jobs and 2,500 indirect jobs over a five-year period across Québec and the rest of Canada.[24] Once constructed and operating, GNLQ would have created over 300 direct jobs and 1,000 indirect jobs in Québec as well as over 5,000 additional indirect jobs over a 25- to 50-year period across Canada.[25] According to a study of socio-economic benefits produced by Mallette, the Symbio Project would also have indirect benefits for the Province as a whole, including through direct and indirect tax revenue, GDP increase, youth-retention, the development of an industrial parc and the increase of port activities.[26] Mallette estimated the total added value of GNLQ alone during the operations phase to be US$ 20.7 [billion] for the Québec economy and US$ 52.4 [billion] for the Canadian economy as a whole.[27]

35. In addition, the Symbio Project included planned benefits of more than Can$ 1 billion to indigenous communities over their initial 25-year operating period.[28]

---

22 E.g. Gazoduq, Detailed Project Description submitted to the Impact Assessment Agency of Canada, (January 2020), **Exh. C-0067**, pp.24, 29

23 *See* Request for Arbitration, para. 41. These figures are based on conservative estimates projected on the basis of the financial models of the GNLQ and Gazoduq Projects. The Claimant has provided those models to its Quantum Expert, which prepared a valuation on the basis of Discounted Cash Flow methodology as of 30 September 2023, as detailed in Section V.C.7 below.

24 E.g. WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, Table 10.3, at p. 626.

25 E.g. WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, Table 10.4, at p. 627.

26 Mallette, "Étude De Retombées Socio-Économiques Rapport Final - GNL Québec – Projet Énergie Saguenay » (26 October 2018), **Exh. C-0047**, pp. 40 *et seq. See also* KPMG, Economic Benefits of the Energie Saguenay Project (June 2015), **Exh. C-0069** pp. 3, 39.

27 *Id.*, p. 32.

28 Gazoduq, Mamo Aki and Gazoduq meeting (29 April 2021), **Exh. C-0070**.

C. The Symbio Project was supported and pursued by a carefully-selected team of experienced professionals committed to implement them

36. The Symbio Project was first conceptualised in early 2013 by Jim Illich, a former Bechtel partner. Mr. Illich took early retirement from Bechtel in 2012 to found his own company, Freestone, as a vehicle for incubating and launching new business ideas.[29] After first launching an independent line of business consultancy that remains active, Mr. Illich quickly focussed on the practical and environmentally and economically promising plan to launch a low-carbon intensive LNG facility and related infrastructure, that ultimately became the Symbio Project.

37. After in-depth exchanges with former clients, business partners and a senior political figure, Mr. Illich concluded in early 2013 that one of the most promising solutions to the complex energy transition problem for millions of people around the world was to power the conversion of natural gas into LNG with renewable energy in a low ambient temperature location, creating the world's least GHG-emitting LNG plant.[30]

38. Mr. Illich's vision was to use available renewable hydroelectricity (rather than natural gas) to power an LNG export plant located in a cold, ambient temperature and within short shipping distance of Europe and other energy markets in the Atlantic Basin.[31] Such export facility would be fed with gas produced in an environmentally-responsible manner that would substantially reduce GHG emissions by replacing more pollutive fossil fuels (*i.e.*, coal and oil), helping to meet the huge and expanding demand for energy over the next decades as the world transitions to a low-carbon energy mix.[32] Taking these parameters into account, the Claimant identified the Province of Québec as the most promising location for the GNLQ Project.[33]

39. Mr. Illich brought to the Projects decades of experience leading the conception and realisation of LNG plants and large diameter pipelines. Over the course of several decades, he and his teams had managed over 30 challenging energy projects in locations around the world, including in North America.[34]

40. From 2013 through to 2021, Mr. Illich led Symbio's pursuit of the GNLQ and Gazoduq Projects on a full-time, hands-on basis. His involvement included interfacing with high-level Québec and Canadian Government officials, engaging with all investors, discussing with key contractors/suppliers, major LNG buyers and gas producers, as well as managing

---

29 Witness Statement of Jim Illich (21 November 2023), paras. 17 *et seq.*, **CWS-1**

30 Witness Statement of Jim Illich (21 November 2023), paras. 20-22 and 31-35, **CWS-1**.

31 GNL Quebec, Memoire of Jim Illich to the BAPE Commission (20 October 2020), **Exh. C-0071**.

32 *Id.*

33 Witness Statement of Jim Illich (21 November 2023), para. 32, **CWS-1**.

34 Witness Statement of Jim Illich (21 November 2023), paras. 6-14, **CWS-1**.

multiple stakeholders for the Projects, all the while providing key conceptual and technical guidance as the Symbio Project progressed from initial stages towards full realisation.[35]

41. Soon after his initial conception of the Symbio Project, Mr. Illich built up a core team of world-class industry experts to advise and lead project workstreams. Mr. Illich hired over 80 direct employees and dedicated contractors over the life of the Projects, who shared the same vision of the Projects. As Mr Illich notes,

> "virtually all of the people we hired in Québec are environmentalists — as [he is] — and became involved precisely because the Project was going to make a real difference to combatting climate change while meeting the significant growing global demand for energy."[36]

42. GNLQ's first CEO was Mr. Chuck Provost, a highly experienced executive who previously served as Director of Project Development and Corporate Planning at Anadarko Petroleum Corporation.[37] Between 2014 and 2018, GNLQ's President was Michel Gagnon, who has over 35 years of experience in executive roles in the light metals and energy industries of Québec.[38] Between 2018 and 2020, GNLQ's President was Mr. Pat Fiore, who had previously served as the President and CEO of Rio Tinto Group's Global Bauxite and Alumina business in Australia and as Chief Operating Officer of the Atlantic Bauxite and Alumina business.[39] Gazoduq's President was Louis Bergeron, who has over 40 years of experience in energy, having previously served as Vice-President of TransCanada.[40]

43. Moreover, the advisory board of the Symbio Project was comprised of highly-respected political figures from Canada and the United States, notably former U.S. Secretary of State George Shultz; and Paul Tellier, Former Clerk of the Privy Council and Secretary to the Cabinet as well as Deputy Minister of Energy, Mines and Resources of Canada.[41] Another leading member of GNLQ was Stéphan Tremblay, well-known environmentalist and former member of Canada's House of Commons and of Québec's National Assembly.[42] Together with GNLQ's public and government relations experts, they provided sustained guidance and expert advice on the political landscape in Québec and Canada.

---

35 Witness Statement of Jim Illich (21 November 2023), paras. 18 onwards and para. 62, **CWS-1**.

36 Witness Statement of Jim Illich (21 November 2023), para. 78, **CWS-1**.

37 Witness Statement of Jim Illich (21 November 2023), para. 67, **CWS-1**.

38 Witness Statement of Jim Illich (21 November 2023), para. 66, **CWS-1**.

39 Witness Statement of Jim Illich (21 November 2023), para. 68, **CWS-1**.

40 Witness Statement of Jim Illich (21 November 2023), para. 69, **CWS-1**.

41 Witness Statement of Jim Illich (21 November 2023), para. 65, **CWS-1**.

42 Witness Statement of Jim Illich (21 November 2023), para. 76, **CWS-1**.

44. Over the course of the Projects' development, GNLQ and Gazoduq instructed dozens of experienced, industry-known experts and consultants, ranging from environmental review experts, experts in relations with First Nations, engineering firms, public relations consultants, technical experts in specific areas such as shipping, pipeline routing, LNG marketing and others.[43] Seasoned members of the GNLQ team included Walt Teter, a world-class specialist in the negotiation of LNG commercial agreements who had previously negotiated upstream and downstream gas supply agreements—including for the largest LNG project in operation globally;[44] Keith Bainbridge, managing director of CS LNG Limited, a UK-based consultancy firm specialised in LNG shipping; [45] Denis Roux, a consultant specialised in the relationship between the proponents of major industrial projects and indigenous communities in Canada; [46] Dean Ferguson, former Senior Vice-President at TransCanada Corporation, and Patti Piett, former Director of Marketing and Utilization, Storage and Transportation at Union Gas.[47]

45. Mr. Illich also built around him a pool of fresh talent that would help him plan, develop and make the Symbio Project a commercial success. Between 2013 and 2020, GNLQ and Gazoduq hired over 80 direct employees, [48] including Vivek Bidwai, who joined as consultant in early 2013 and led the core commercial aspects for the Symbio Project until he became Senior Vice President, Commercial to GNLQ Development Inc. (GNLQ's wholly-owned subsidiary in the United States). Mr. Tony Le Verger joined Freestone as an associate in March 2014, having already worked in 15 different countries for a wide range of leading industrial and capital intensive enterprises, including Total (now TotalEnergies). In 2018, Mr. Le Verger moved to Montréal in 2018 in order to lead key development, financial and investment activities from inside Québec, being seconded full-time to GNLQ as Vice-President in Finances and Development and ultimately becoming President of GNLQ. Other key employees included Cathy Baptista, Gazoduq's Director for the Environment; Caroline Hardy, GNLQ's Director for the Environment, Sylvain Ménard, environmental advisor at GNLQ; and Carolina Rinfret, regulatory and legal advisor at Gazoduq, to name a few.

46. Together, this core team had all of the expertise and experience required to make the Symbio Project a success.

---

[43] Witness Statement of Jim Illich (21 November 2023), paras. 77 *et seq.*, **CWS-1**. This included, for example, Poten & Partners, Bechtel and Chiyoda, Foster Wheeler, Ceterteg Worley Parsons and Golder, Moffat & Nichol,Wood Mackenzie, EY, CS LNG, DNV, MSRC, Tetratech, WSP, the Université du Québec à Chicoutimi (UQAC), the International Reference Center for Life Cycle Assessment and Sustainable Transition, Transfert, to name a few.

[44] Witness Statement of Jim Illich (21 November 2023), para. 70, **CWS-1**.

[45] Witness Statement of Keith Bainbridge (20 November 2023), paras. 9 *et seq*, **CWS-4**.

[46] Witness Statement of Denis Roux (21 November 2023), paras. 6-7, 22, **CWS-6**. *See also* Witness Statement of Jim Illich (21 November 2023) para. 74, **CWS-1**.

[47] Witness Statement of Vivek Bidwai (21 November 2023), para. 17, **CWS-2**.

[48] Witness Statement of Jim Illich (21 November 2023), para. 70, **CWS-1**.

D. The Symbio Project team first identified and secured an ideal site

47. The first step was to identify the best site for the Symbio Project in Québec. Symbio first undertook careful research and analysis, involving a review of approximately 14 potential sites in Québec, paying close attention to the Québec government's existing analysis of the Province's potential to host LNG-related industries.[49] The analysis included consideration of two sites along the St Lawrence previously earmarked for prior LNG terminal projects, and for which Québec had already granted environmental approval (signalling the Province' openness to such proposals).[50] After initial shortlisting, the Symbio Project team conducted an in-province inspection of the most promising sites, engaging in helicopter tours to better visualise each location.[51]

48. Following careful examination of the geomorphological features of several sites and rigorous assessment of their environmental, social, economic implications, the Symbio Project team ultimately chose the Grande-Anse site near the Port of Saguenay on the south shore of the Saguenay fjord as the ideal location for the proposed natural gas liquefaction facility and marine export terminal (**see Figure 1**).[52]

49. The Grande-Anse site offered uniquely favourable conditions for the Project: access to Québec's abundant renewable hydroelectric resources; relatively cold local temperatures maximising the efficiency of the liquefaction process; a substantial and skilled local industrial workforce linked to the presence of significant heavy industry in the region; a site that met all relevant engineering, construction and operational criteria; and, as the Project team went on to confirm, the presence of a supportive local community.[53] In addition, the Grande-Anse site was of considerable size; was easily accessible by major road infrastructure; was far removed from any densely populated area; was zoned as an industrial and port area; was located near the Bagotville airport; was closer to Western Canadian gas supplies than other sites located farther to the East, and about 40% closer to European destination markets compared to LNG terminals in the U.S. Gulf Coast; and gave immediate access through the Saguenay River to a navigable waterway, the St. Lawrence Seaway, that allowed for shipping LNG to Europe and Asia.[54] Indeed, the Grande-Anse site offered unique advantages in terms of shipping: the Port of Saguenay is located in a deep-water fjord,

---

49 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, pp. 44-45; Witness Statement of Vivek Bidwai (21 November 2023), para. 33 *et seq.*, **CWS-2**.

50 Natural Gas Intelligence, "Quebec's Rabaska LNG Terminal Greenlighted", **Exh. C-0072,** and Lloyd's List, "Quebec approves Rabaska LNG terminal" (25 October 2007), **Exh. C-0073**.

51 Witness Statement of Vivek Bidwai (21 November 2023), para. 34, **CWS-2**.

52 *See, e.g.*, Witness Statement of Jim Illich (21 November 2023) paras. 31-35, **CWS-1**; Witness Statement of Vivek Bidwai (21 November 2023), paras. 41 *et seq.*, **CWS-2**.

53 GNL Québec, "A Sustainable LNG Project" (February 2019), **Exh. C-0075**, pp. 5-6 and 39-48.

54 *Id. See also* WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, p. 64

which made dredging unnecessary and allowed for a low-cost jetty thereby reducing capital expenses (**CAPEX)** compared to most LNG export projects.[55]

Figure 4 - Existing infrastructure and skilled labor (Source: Exh. C-0075, slide 44)

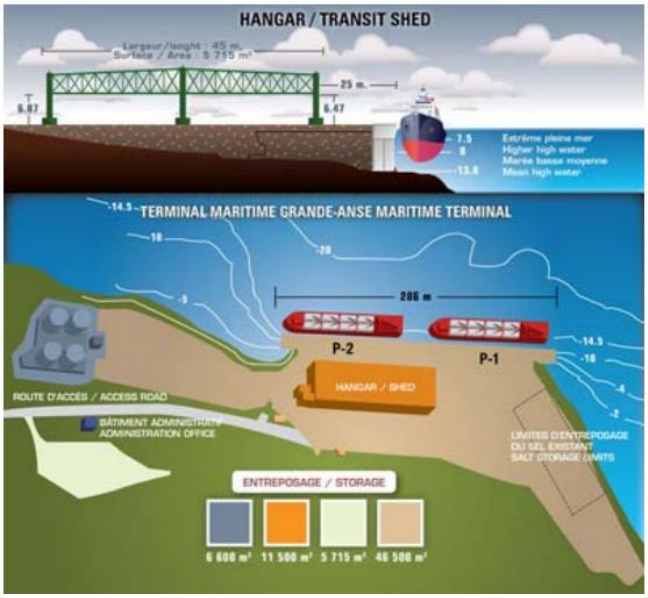


Figure 5 - Physical Features of Grande-Anse Terminal (Exh. C-00326, page 7)

55 *E.g.* GNLQ, "Énergie Saguenay LNG Project, Confidential Private Placement Memorandum" (November 2016), **Exh. C-0074**, p. 14.

50. The Symbio Project team's interest in the Saguenay site was also bolstered by the fact that both the Federal[56] and the Québec Governments had been promoting the use of the Saguenay Port as a highway for economic development. Symbio's selection of the Saguenay site was complementary with government policy. In 2012, the Federal Government launched a plan for modernizing and expanding the railway infrastructure linking the Port of Saguenay to Canadian markets to the West, with the clear intent of boosting "the effectiness and capacity of port opeations". As of 2013 the Saguenay region's key industries had suffered considerable economic decline, resulting in a steep decline of maritime traffic in the Saguenay River (from 600 ships/year in the 1970s to about 190-200 ships/year in 2012).[57] The Province was thus looking to jumpstart the economy of the region and relied on the Saguenay Port to that end. The SPA's ambition was to return the Saguenay Port to its historic navigation levels, which is why they encouraged GNLQ and other kinds of export projects to locate in Saguenay.[58]

51. The Québec Government more broadly consistently promoted shipping on the St. Lawrence Seaway as a key driver of Québec's development, a policy that aligned perfectly with Symbio Project plans.[59] On 29 June 2015 Premier Couillard was the first Premier to launch Québec's maritime strategy, together with an action plan for 2015-2020 aimed at making full use and promotion of the St. Lawrence River, contemplating a Can$1.5 billion investment.[60] According to the Québec Government, this strategy:

> "vise à mettre en valeur le fleuve Saint-Laurent, la plus importante voie navigable en Amérique du Nord … on reconnaît l'impact que le fleuve Saint-Laurent a eu sur l'histoire du Québec et lui accorde toute l'importance qui lui revient pour assurer notre croissance à long terme».[61]

---

56 **Exh. C-0076**.

57 Witness Statement of Vivek Bidwai (21 November 2023), para. 60, **CWS-2**.

58 Witness Statement of Vivek Bidwai (21 November 2023), para. 60 *et seq.*, **CWS-2**.

59 *See*, for example, Ministère des Finances, Québec, Communiqué de presse No. 4, « Budget 2014-2015 - Déploiement de la stratégie maritime du Québec », **Exh. C-0077** (« La stratégie maritime . . . mettra en valeur le potentiel du fleuve et de l'estuaire du Saint-Laurent et donnera un nouvel élan au transport maritime, un mode de transport sécuritaire et écologique. Elle déclenchera des investissements majeurs et soutiendra un grand nombre d'emplois », a souligné le ministre. »

60 *See* Ministère des Relations internationales et de la Francophonie, Lancement de la Stratégie maritime du Québec (29 June 2015), **Exh. C-0078**. *See also* Ministère des Relations internationales et de la Francophonie, La toute première stratégie maritime de l'histoire du Québec est lancée (29 June 2015), **Exh. C-0079**. *See further* Parti Libéral du Québec, « Une Strategie Maritime pour le Québec » (2014), **Exh. C-0080**, p. 4 (« ALÉNA . . . permet au Québec de se positionner comme l'un des principaux pôles logistiques des activités d'import-export entre les deux continents. . . Le Québec possède plusieurs ports en eau profonde capables d'accueillir des navires de plus forte taille et un trafic accru. ») and p. 18 (« Afin que l'on transporte de manière plus sécuritaire et plus écologique nos marchandises, un gouvernement libéral . . . Encouragera l'emploi du gaz naturel liquéfi é (GNL) comme carburant . . . ce qui permet de réduire les émissions de GES de plus de 20 % par rapport au diésel. »)

61 Gouvernement du Québec – Secrétariat aux affaires maritimes, Stratégie maritime, Plan d'action 2015-2020 (29 June 2015), p. 4. **Exh. C-0082,** *See* Ministère des Relations internationales et de la Francophonie, Lancement de la Stratégie maritime du Québec (29 June 2015)**, Exh. C-0078**. *See also* Ministère des Relations internationales et de la Francophonie, La toute première stratégie maritime de l'histoire du Québec est lancée, (29 June 2015), **Exh. C-0079**.

52. Québec's Minister for Transport also affirmed at the time that the Saguenay Port would "profit from important sums that had been planned for the development of the designated [industrial port] zones" and that the Government would "accompany the ports in their development projects".[62] As part of this maritime strategy, Premier Couillard concluded in 2016 an agreement for "l'implantation d'une zone industrialo-portuaire à Saguenay".[63] The Government revised its maritime strategy for the St. Lawrence River in 2021, envisaging a Can$967 million investment in maritime infrastructure, including a Can$300 million envelope for the modernisation of ports.[64]

53. For its part, the Saguenay Port Authority (**SPA**) — an autonomous federal public enterprise which owns and operates the Grande-Anse Marine Terminal — was promoting the expansion of the Saguenay Port through the construction and operation of a multi-user marine terminal to service the north shore of the Saguenay River (**North Shore Terminal**).

54. North Shore Terminal was less than 8 km from the Grande-Anse site,[65] where, As Rod Northey confirms in his Report, the proposed liquefaction facility and marine terminal were to be "constructed entirely on lands owned by the [SPA]".[66]

55. North Shore Terminal included a wharf designed to accommodate up to 140 bulk cargo vessels per year with a minimum of 50,000 deadweight tonnage.[67] The SPA presented the North Shore Terminal Project as tangible evidence that the Saguenay River was "open for business" and emphasised other companies interested in developing exporting projects in the area as beneficial to the region's economy.[68]

56. That openness to business was reflected in the Project's early contacts with local, regional and national officials.

57. In October and December 2013, the Symbio Project team held a series of exchanges and in-person meetings with senior politicians in the Saguenay region, including with Saguenay Mayor Jean Tremblay, Stephane Bedard (President of Québec's Treasury Board, Quebec's

---

62 Informe Affaires, « Stratégie Maritime Du Québec | Port-Saguenay Bien Positionné Pour Se Développer » (30 October 2015) **Exh. C-0081**. (Unofficial translation from French original : «Port-Saguenay pourrait profiter des sommes importantes qui ont été planifiées pour le développement de ces zones désignées. [Jean d'Amour, le ministre délégué aux Transports et à l'Implantation de la stratégie maritime] poursuit en précisant qu'au-delà de l'argent le gouvernement du Québec accompagnera les ports dans leurs projets de développement. »)

63 Le Devoir, « Québec veut développer l'activité portuaire » (7 June 2016), **Exh. C-0083**.

64 *See* Ministère des Transports, Avantage Saint-Laurent – L'économie bleue au cœur de la relance économique, (17 June 2021), **Exh. C-0084**. Radio-Canada, «Stratégie maritime : les grandes espérances de l'Est-du-Québec » (17 June 2021)**, Exh. C-0085**.

65 *See* summary description of the Project at **Exh. C-0086**.

66 Expert Report of Rodney Northey, para. 55.

67 *Id.*

68 Witness Statement of Vivek Bidwai (21 November 2023), paras. 52 *et seq.*, **CWS-2**. Witness Statement of Jim Illich (21 November 2023), para. 43, **CWS-1.**

Minister responsible for the Saguenay-Lac-Saint-Jean region, and senior Member of the Québec National Assembly for the Parti Québecois) and The Honorable Denis Lebel (Federal Minister of Infrastructure, Communities and Intergovernmental Affairs and Minister of the Economic Development Agency of Canada for the Regions of Quebec).[69]

58. Both provincial and federal authorities were quite positive and supportive of the Project, which aligned with federal, provincial and regional plans to develop the Saguenay region. The Symbio Project team also gave a presentation of their vision to use hydroelectric power to electrify an LNG export terminal to the entire Board of Directors of the SPA, which was elated and highly supportive.[70] Government officials saw in the Symbio Project the potential to bring growth, technological innovation and employment opportunities for young people, drawing a parallel between GNLQ and Rio Tinto.[71]

59. [redacted] is indicative of the enthusiasm and strong support by local government officials at the time.[74]

60. [redacted]

69 *See also* Saguenay LNG Development Quarterly Status Report (3 March 2014), **Exh. C-0087**, p. 1.

70 *See* PowerPoint Presentation, "Energie Saguenay" (6 November 2013), **Exh. C-0089**

71 Witness Statement of Jim Illich (21 November 2023), para. 48, **CWS-1.**

72 [redacted]

73 [redacted]

74 In this regard, *see* the comments made by Mayor Tremblay in June 2014 in connection with the public launch of the Project: *See* Énergie Saguenay, "Media Report on launching" (June 2014), **Exh. C-0042**.

75 [redacted]

[redacted]

61. [redacted], the corporate structure for the GNLQ Project was also put in place. On 29 April 2014, Freestone and Breyer Capital incorporated the Claimant, Ruby River Capital LLC.[78] A few months later, on 10 October 2014, Ruby River incorporated Symbio Infrastructure Limited Partnership, which was initially named LNG Québec Limited Partnership.[79] At the same time, Ruby River also incorporated 9311-0385 Québec Inc. (a 100% owned subsidiary of Ruby River Capital through which it owns a majority and controlling interest in Symbio[80]) as well as 100% controlling interest in Symbio Infrastructure GP Inc., the designated General Partner under Symbio's Limited Partnership Agreement.[81]

E. The Projects were consistently successful in obtaining financing through multiple rounds

62. It was clear from the start that the Symbio Project was going to require substantial injections of cash from private sources. As is normal with this kind of major infrastructure projects, the Project team from the start conceived of financing as a series of stages or "rounds", with each milestone in project development laying the basis for more extensive financing calls.[82] Given the quality of participants in the Symbio Project and the diligence which with it was developed, the Symbio team successfully raised over $120M in four rounds rounds of financing between 2013 and 2021.

---

76 *See also* Witness Statement of Jim Illich (21 November 2023), para. 54, **CWS-1**.

77 [redacted]

78 Ruby River Capital LLC, Certificate of Good Standing (State of Delaware) (13 February 2023), **Exh. C-0002** and Ruby River Capital LLC, Certified Copy of Certificate of Formation (State of Delaware) (26 September 2022), **Exh. C-0003**.

79 Symbio, Statement of Information on a Partnership in the Québec Enterprise Registry (6 April 2022), **Exh. C-0007** and Symbio Infrastructure Limited Partnership, Certificate of Attestation (30 September 2022), **Exh. C-0008**.

80 Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), **Exh. C-0011** and Symbio Infrastructure Limited Partnership, Fourth Amended and Restated Limited Partnership Agreement (28 January 2019) (Extracts), **C-0012**.

81 Symbio Infrastructure Limited Partnership, Fourth Amended and Restated Limited Partnership Agreement (28 January 2019), **Exh. C-0012**, Symbio Infrastructure GP Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry (5 April 2022), **C-0013** and Symbio Infrastructure GP Inc., Certificate of Attestation (30 September 2022), **C-0014**.

82 *See*, in greater detail, Witness Statement of Jim Illich (21 November 2023), Section XI, **CWS-1**. *See also* Witness Statement of Vivek Bidwai (21 November 2023), Section VII, **CWS-2**.

63. The focus in 2013-2014 was initial due diligence and feasibility exercises. At this stage, Mr Illich relied on his industry standing and network to secure basic "seed capital" financing. In October 2013, following the promising initial meetings in the Saguenay area, the Symbio Project secured the support of Jim Breyer, a prominent venture capitalist, entrepreneur and high net worth individual, to invest US$ 3 million through his investment company, Breyer Capital LLC, a limited liability company (**Breyer Capital**) based in California at the time, with the balance of the round (US$ 250,000) coming from Mr. Illich through Freestone.[83]

64. Freestone and Breyer Capital invested the initial combined capital of US$ 3,250,000 in Ruby River. Ruby River's wholly-owned subsidiary 9311-0385 Québec Inc. (also known as "RR Québec Holdco") contributed this initial capital of US$ 3,250,000 to LNG Québec Limited Partnership[84] (which was renamed in 2021 to "Symbio Infrastructure Limited Partnership"[85]), which in turn channelled this capital to Symbio, closing the first round of financing on 10 October 2014.

65. As part of the first round, on 9 January 2015 Breyer Capital made a further subsequent contribution of US$ 400,000 to Symbio.[86]

66. On 28 May 2015, Symbio completed its second round of financing, having raised capital in both 2014 and 2015. In addition to Freestone and Breyer Capital (which together contributed US$ 2,800,000), this round attracted capital contributions from six new investors to the tune of almost US$ 20 million. This included institutional investors, such as Liquefaction Holdings LLC (Darlington Partners), a California-based private investment partnership, and Madrone Capital Partners LLC, an investment firm sponsored by members of the 'Walmart' Walton family, as well as high net worth individuals and family trusts.[87] In addition, in April 2016 Symbio raised an additional capital of US$ 6.11 million as part of the April 2016 expansion financing capital contributions.[88] The total amount invested in that second round was US$ 19.9 million.[89]

---

83 "Symbio Infrastructure LP - Fully Diluted Cap Table by Round", **Exh. C-0095**, tab "R1 Ruby River Capital". *See*, in greater detail, Witness Statement of Jim Illich (21 November 2023), para. 156.

84 *Id.*, tab "R1 SC (LNG LP). *See also* Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), p. 1, **Exh. C-0011.**

85 Symbio, Statement of Information on a Partnership in the Québec Enterprise Registry, 6 April 2022, p. 4, **Exh. C-0007.**

86 Symbio Infrastructure LP - Fully Diluted Cap Table by Round, **Exh. C-0095**, Tab "R1 SC (LNGQ LP)". *See also* Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), p. 1, **Exh. C-0011**.

87 Witness Statement of Vivek Bidwai (21 November 2023), paras. 153 *et seq.*, **CWS-2**.

88 Symbio Infrastructure LP - Fully Diluted Cap Table by Round, **Exh. C-0095**, tab "2016 EF (LNGQ LP)". *See also* Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), p. 1, **Exh. C-0011**.

89 *Id.*, tab "R2 (LNGQ LP)". *See also* Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), p. 1, **Exh. C-0011**.

67. Together, the first and second round totalled US$ 29.66 million. These funds were used to fund the initial studies of the Project, validate its feasibility, begin the de-risking of the development, hire a versatile, motivated team, and secure the first set of key agreements to build the foundation of the Project.[90]

68. As explained below, Symbio continued to raise significant capital in the subsequent years. In the third round of financing, Symbio raised approximately US $41 million from existing and seven new investors and used that capital to fund major development activities and secure LNG buyers, as well as to fund pipeline activities in order to stay on the critical path to FID.[91] During that round, Symbio attracted major, world-class investors, including high net worth individuals and family trusts from North America and Chinese company CITIC.[92] It was during the third round of financing that the Government of Québec would make its first offer to invest in the Project after rigorous due diligence by its specialized investment arm, Investissement Québec (**IQ**), only to retract at the last minute whilst reassuring existing and prospective investors of its continued interest and support in the Project.[93]

69. Despite this, in 2019 the newly-elected Government of Premier Legault would express once more its interest to invest in the Project at a meeting he held with the founders of Symbio at the World Economic Forum, in Davos.[94] Ultimately, however, the Government would once more backtrack on its promise, frustrating the Project's fund-raising efforts, and gradually become more and more hostile against the Project.[95]

F. The Symbio Project engaged a range of key consultants to undertake extensive due diligence, confirming the Project's technical, economic and environmental feasibility

70. The first years of the Symbio Project, as of 2013, were dedicated to the conduct of initial due diligence on a number of commercial, technical and environmental fronts, to ensure project feasibility. To this end, the Symbio Project team proceeded to engage a range of specialised professionals, progressively expanding the team as work progressed and deepened.[96]

---

90 GNLQ, "A Sustainable LNG Project", February 2019, **Exh. C-0075**, slide 24. Witness Statement of Jim Illich (21 November 2023), paras. 155-161, **CWS-1**.

91 Witness Statement of Vivek Bidwai (21 November 2023), paras. 160 *et seq.***, CWS-2.**

92 Witness Statement of Vivek Bidwai (21 November 2023), paras. 163-168. Witness Statement of Jim Illich (21 November 2023), paras. 160 *et seq.* 162-181**., CWS-1.**

93 Witness Statement of Vivek Bidwai (21 November 2023), paras. 160 *et seq.***, CWS-2.**

94 Witness Statement of Jim Illich (21 November 2023), paras. 185 *et seq.***, CWS-1.**

95 Witness Statement of Jim Illich (21 November 2023), paras. 208 *et seq.***, CWS-1.**

96 Witness Statement of Jim Illich (21 November 2023), Section IX.A**, CWS-1.**

71. On commercial feasibility, in October 2013 the Symbio Project first hired Poten & Partners, leading consultants in the energy and maritime transportation industries, to conduct a series of studies relating to the costs and financial viability of constructing, commissioning and operating the proposed LNG plant.[97] In accordance with typical practice, Poten & Partners concluded in March 2014 a "fatal flaw" analysis to seek to identify any potential major obstacles based on a preliminary review of project plans.[98] They concluded that there were no such flaws – either with regard to the site itself, or concerning any technical or regulatory processes.

72. On the technical feasibility front, in 2014 the Symbio Project team also engaged Foster Wheeler, a leading engineering and project management firm, as the lead engineers for the Project to conduct a first series of preliminary front-end engineering and design ("pre-FEED")[99] and design studies.[100] Again, these studies confirmed the technical feasibility of the proposed LNG plant.[101] Foster Wheeler was also supported by specialist engineering companies such as Wood Group Mustang, Moffatt & Nichol, Cegertec Worley Parsons and Golder & Associates. At a later stage, Bechtel and Chiyoda completed a second set of pre-FEED studies.[102]

73. On environmental impact assessment, the Symbio Project team from 2014 to 2015 first engaged Stantec, a leading design and consulting services firm, to conduct initial benchmarking analysis. From 2016 onwards, the Project team went on to instruct WSP, a leading engineering consulting firm, to produce studies analysing the potential environmental impacts of the proposed facility. WSP prepared GNLQ's Environmental Impact Statement (**EIS**) with input from GNLQ itself as well as other parties (such as Bechtel), and GNLQ would submit it to the relevant Québec and Canadian regulatory

---

97 Poten & Partners, "LNG Permitting Schedule Report" (March 2014), **Exh. C-0096**, Poten & Partners, "Pre-FEED Contractor Screening Report", **Exh. C-0097**, Poten & Partners, "Site Layout and Project Technical Definition Report" (March 2014), **Exh. C-0098**, Poten & Partners, "LNG Market Analysis (Final)" (March 2014), **Exh. C-0099**, Poten & Partners, "Freestone Marine and Shipping Review" (March 2014), **Exh. C-00100**. [an overview of the permitting process for Canadian LNG export projects, a pre-Front End Engineering and Design ("FEED") contractor screening, discussions on project layout, LNG market analysis and a marine and shipping review] Later, in March 2020, Poten would also produce a market report presenting the analyses and studies on the markets and use of LNG in the world (Letter from GNLQ to Denis Bergeron, "Transmission et dépôt volontaire de documents à la Commission" (13 March 2020), **Exh. C-00101**, Poten & Partners, "Rapport de marche sur la destination et l'utilisation finales du GNL" (March 2020), **Exh. C-00102**).

98 Poten & Partners, "Fatal Flaw Analysis", March 2014, **Exh. C-00103**, pp. 4-9.

99 Witness Statement of Tony Le Verger (21 November 2023), footnote 2, **CWS-3**.

100 Foster Wheeler, "Project Philosophy Report" (11 June 2014), **Exh. C-00104**, Foster Wheeler, "Utility Load List" (23 June 2014), **Exh. C-00105**, Foster Wheeler, "Winterisation Philosophy Report" (30 June 2014), **Exh. C-00106** (including fire protection and winterisation measures for the protection of personnel and equipment during operation and maintenance of the LNG plant, where needed against the effects of the cold climate)

101 GNLQ, Énergie Saguenay – Quarterly Status Report (1 January 2016), **Exh. C-00107**.

102 *See* Witness Statement of Jim Illich (21 November 2023), para. 88, **CWS-1**.

authorities in February 2019,[103] as well as respond to their various rounds of follow-up queries over the next two-and-a-half years.

G. GNLQ obtained an export license from the National Energy Board early-on

74. In order to sell its product outside of Canada, GNLQ needed to obtain a special export licence from Canada's National Energy Board (**NEB**). Accordingly, on 27 October 2014 — at the earliest possible stage in its project de-risking process — GNLQ filed an LNG export license application with the NEB.

75. In support of its application, GNLQ retained Navigant Consulting Inc. (**Navigant**) to conduct a supply and demand market assessment.[104] Navigant concluded that there was as "strong outlook" for Canadian and North American natural gas markets, characterized by ample, stable supplies and competitive, stable prices, driven by the abundance of the natural gas resource due to the shale revolution.[105] In Navigant's view, "[t]he plentiful Canadian resource base, together with the highly integrated North American natural gas market, [would] ensure sufficient supplies to meet Canadian natural gas demands at competitive prices."[106] As a result of the significant volumes of natural gas available in Canada, Navigant concluded that the quantity of natural gas to be exported from Canada by GNLQ would not exceed the surplus remaining after allowance for the reasonably foreseeable requirements for use in Canada.[107]

76. The NEB approved the export license on 27 August 2015 for a maximum quantity of 313.09 million tonnes of LNG that could be exported over the initial 25-year term of the licence (i.e., about 458.34 million m^3 or 16,180 Bcf of natural gas).[108] The Governor-in-Council approved the issuance of the license by Order dated 20 May 2016 and the NEB issued the license on 26 May 2016.[109] The granting of the export license was a major milestone, as it was another early-stage confirmation from the Federal Government that the Project could go forward.[110] Notably, the NEB-approved quantities exceeded GNLQ's planned export capacity.

---

103 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043.**

104 Navigant, "GNL QUÉBEC INC. Natural Gas Supply and Demand Market Assessment" (27 October 2014), **Exh. C-00108**.

105 *Ibid*, p. 42, "Conclusions", paras. 1-2.

106 *Id.,* p. 43, "Conclusions", para. 5.

107 *Id.,* p. 43, "Conclusions", para. 8.

108 National Energy Board, Letter Decision, "GNL Québec Inc. 27 October 2014 Application for a Licence to Export Gas as Liquefied Natural Gas" (August 2015) **Exh. C-00109**, p. 6, Appendix I, points 1-4. In the statement of reasons, the NEB concured with Navigant's market analysis, and affirmed that the gas resource base in Canada is sufficiently large to accommodate both the Canadian demand and the LNG exports proposed in GNLQ's application. *Id.*, p. 4.

109 National Energy Board, Licence GL-317 (26 May 2016), **Exh. C-00110**.

110 GNLQ, Quarterly Status Report (1 January 2016), **Exh. C-00107**, p. 2.

H. The Symbio Project team also pursued the parallel plan to develop a natural gas transmission line from Ontario to Québec

77. Securing the supply of low-cost natural gas to the liquefaction facility in the Saguenay region was an essential component for the commercial success of the Symbio Project. Thus, at the initial due diligence stage, the Project team also engaged a number of energy companies and industry experts to advise on linking the liquefaction facility to existing gas transportation infrastructure through a natural gas transmission line.

78. To that end, in late 2013 and throughout 2014 and 2015, the Symbio Project team initiated confidential discussions with major North American pipeline developers to support the development, construction and permitting process for a natural gas transmission line system.[111] In the course of these discussions, senior executives and engineers from [redacted] – among others – were positive about the Symbio Project's fundamentals and attributes, confirming the strong commercial interest of major market players and expressing great interest in developing a new natural gas transmission line system on the Project's behalf.[112]

79. In February 2015, [redacted] developed and submitted to the Symbio Project team a preliminary feasibility study aimed at determining a viable route from TransCanada's existing infrastructure to the Project site in the Saguenay region.[113] This report identified a 625-km route for the necessary natural gas transmission line, which they considered to be the most viable and cost-effective.[114] Both developers validated the technical feasibility of the proposed natural gas transmission line.[115]

80. Similarly, in June 2015, [redacted] submitted a draft proposal for "a joint venture partnership to develop and construct the proposed natural gas transmission line to serve the [Énergie Saguenay] LNG export project",[116] proposing three possible routes.[117] In parallel, Project team members pursued discussions with other North American developers such as [redacted], who also expressed interest in partnering with the Symbio Project.[118] After careful review of these proposals, in 2015 and 2016 the Symbio Project team held discussions with [redacted] about the routing of the pipeline.

---

111 Freestone International LLC, "Saguenay LNG Development — Quarterly Status Report" (3 March 2014), **Exh. C-0087**, pp. 2-3. Freestone International LLC, "Énergie Saguenay – Quarterly Status Report" (1 June 2014), **Exh. C-00111** p. 3. GNLQ, Énergie Saguenay – Quarterly Status Report (1 July 2015), **Exh. C-00112**, p. 5.

112 Witness Statement of Vivek Bidwai (21 November 2023), para. 25 *et seq*., **CWS-2.**

113 [redacted], "Feasibility Report Energy Saguenay Project" (February 2015), **Exh. C-00113**.

114 *Id.*, pp. 5-6.

115 *Id.*, pp. 5-6.

116 [redacted], "Draft GNL Quebec Proposal – Confidential" (10 June 2015), **Exh. C-00114**, pp. 35-36.

117 *Id.*, pp. 24-47.

118 Witness Statement of Vivek Bidwai (21 November 2023), para. 78 *et seq*., **CWS-2.**

Effectively, all proposed routes originated at the Canada–U.S. border at a point between Iroquois (in Eastern Ontario) and Waddington (in New York State), building on existing infrastructure in the so-called "Eastern Ontario Triangle" (**EOT**) moving along the St. Lawrence river.[119]

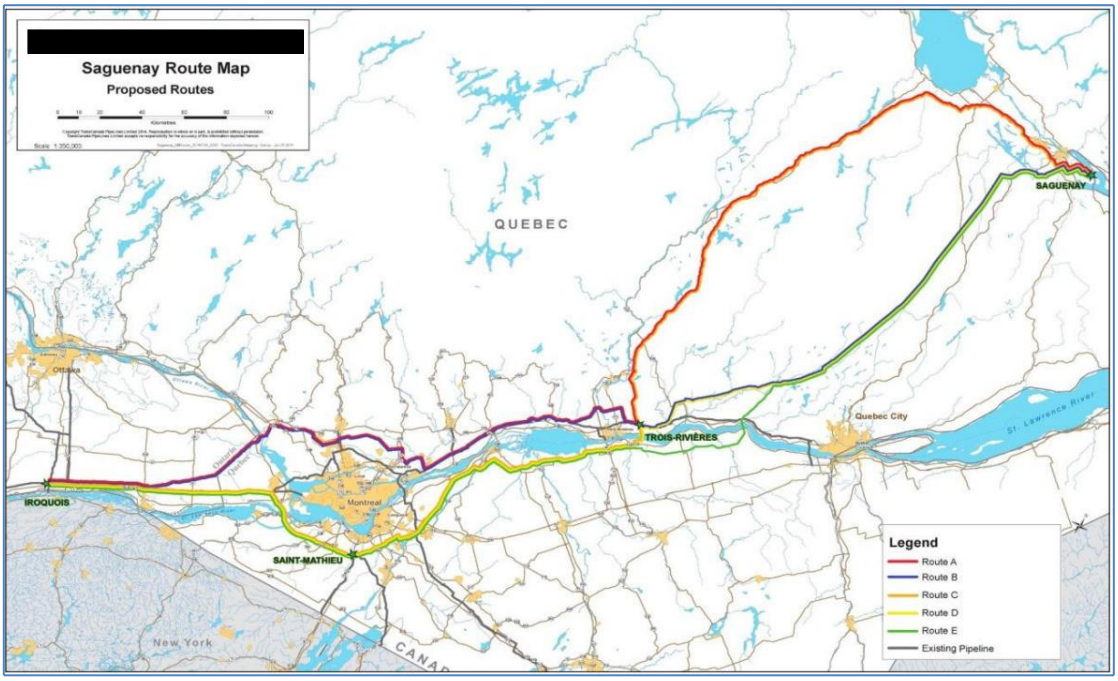


Figure 4 - Proposed routes by [redacted]

[119] The "Eastern Ontario Triangle" typically refers to the three legs of TransCanada's pipeline system which serves the gas market in Eastern Ontario, also known as the Eastern Delivery Area. *See* Witness Statement of Vivek Bidwai (21 November 2023), Figure 10, **CWS-2.**

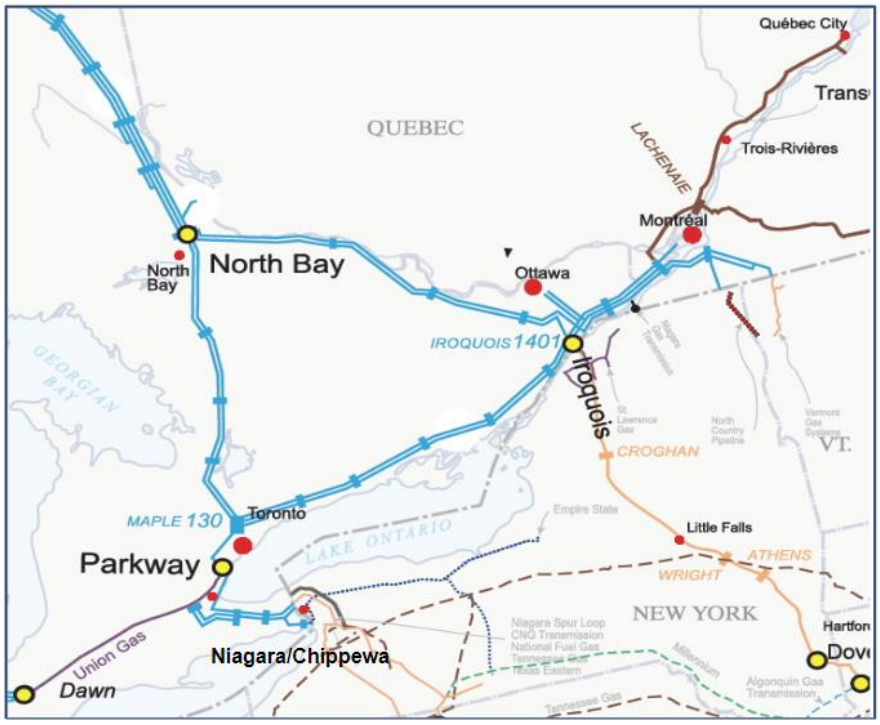


Figure 5 - Eastern Ontario Triangle (EOT) Pipeline Configuration

81. The Symbio Project team however was resistant to this idea, as a natural gas transmission line from the EOT would traverse major local population centres like Montréal and Trois Rivières in the south corridor, posing significant potential risks to the Project's development and regulatory approval.[120]

82. Additionally, several other commercial, technical and political considerations weighed in favour of a natural gas transmission line that would originate to entirely rely on natural gas from Western Canada, rather than the United States:

    a. *First*, the Symbio Project would be able to secure a steady supply of natural gas from Western Canada at a significantly lower cost compared to the United States. Even though Canada was historically a net exporter of natural gas to the United States, the rapid expansion of unconventional natural gas from the Marcellus and Uttica Shale in the United States starting from 2008 progressively displaced Canadian natural gas, which lost approximately 40% of its export market.[121] As a result, Canadian producers

120 Witness Statement of Vivek Bidwai (21 November 2023), para. 81, **CWS-2.** *See also* the observations set out in GNLQ, "Memorandum, Recommendation for Gazoduc Corridor" (29 April 2018), **Exh. C-00115**, pp. 2-3 (indicating the possibility of medium to strong opposition from local communities across the St. Lawrence River, the additional costs associated with an extra toll for the TransCanada Eastern Triangle as well as a mainline toll, and the fact that GNLQ would be unable to authenticate whether it accesses Canadian gas or U.S. shale gas imported from TransCanada).

121 *See, e.g.*, Financial Post, "New Marcellus pipelines from northeastern U.S. squeezing out Canadian natural gas" (9 September 2015), **Exh. C-00116** ("Marcellus and Utica shale basins in the northeastern United States have seen production soar to 19 billion cubic feet per day this year, from less than two bcfd in 2007 — surpassing Canadian production in the space of a few years. As pipeline operators refit their pipes or build new ones to source Marcellus gas that's trading at just

sold their natural gas under the so-called AECO price index (the primary benchmark gas price in Canada) at a significant discount to its U.S. counterpart (the Henry Hub price index), whereas Canada's breakeven cost of natural gas is among the lowest in the world.[122] This meant that the Symbio Project could secure steady natural gas supply at a competitive price.

b. *Second*, there was considerable uncertainty at the time concerning the supply of natural gas from the United States to Canada, which was epitomised in the cancellation of the 2016 Constitution Project by the Governor of New York.[123] This development added considerable uncertainty to [redacted]'s proposal to transport natural gas to Saguenay from the U.S. through Iroquois/Waddington.

c. *Third*, in October 2017 TransCanada withdrew its application for the Energy East Pipeline,[124] a 4,500-kilometre pipeline that planned to carry 1.1 million barrels of crude oil per day from Alberta and Saskatchewan to refineries in Eastern Canada and would cross the same corridor as the one proposed to the Symbio Project by [redacted].[125] TransCanada was planning to convert 3,000 km of existing, unused natural gas transmission capacity on the Canadian Mainline system to oil pipeline(s) in order to transport crude oil for Energy East.[126] Cancellation of Energy East resulted in significant excess capacity on Canadian Mainline, which meant that the Symbio Project could obtain materially better rates for the transportation of natural gas from Western Canada (as opposed to the United States) without needing to expand the existing mainline system.[127]

d. *Finally*, based on the many years of professional experience in the core members of its team, the Symbio Project's leadership determined that it had sufficient in-house expertise to develop and build the natural gas transmission line itself, drawing on a

---

under US$1.30 per million cubic feet, Western Canadian producers will see their market share erode in the Midwest and Eastern markets").

122 *See* CER, "Canadian natural gas sector breakeven costs among the lowest of top 10 major natural gas producing countries" (21 February 2023), **Exh. C-00117**.

123 Witness Statement of Vivek Bidwai (21 November 2023), paras. 83 *et seq.* **CWS-2**. The Constitution Pipeline had obtained approval from the US Federal Energy Regulatory Commission in late 2014 and planned to deliver natural gas to the southern end of the Iroquois pipeline. Had the Constitution Pipeline been built, it would have added approximately 650 million ft3/day of available gas at that point, leading to a significant decrease in regional gas prices

124 TC Energy, "Transcanada Announces Termination of Energy East Pipeline and Eastern Mainline Projects" (5 October 2017), **Exh. C-00118**.

125 *See* Canada Energy Regulator, "Energy East and Eastern Mainline Projects"**, Exh. C-00119**.

126 CER, "Canada's Pipeline Transportation System 2016", **Exh. C-00120** ("TransCanada has two additional projects before the Board. Energy East proposes to convert 3000 km of natural gas pipeline for crude oil transport, and construct 1520 km of new pipeline.")

127 Witness Statement of Vivek Bidwai (21 November 2023), para. 86, **CWS-2**.

wide range of professional experts that would advise on the Project in the years to come.[128]

83. In light of these considerations, the Symbio Project team by mid-2017 had decided not to contract out responsibility for the design, approval and construction of the Project's pipeline element to a third-party developer. To that end, the Project ramped up in-house pipeline capacity, bringing on experts like Ron Brintnell, a longtime former Enbridge executive, to manage key aspects of the pipeline; Universal Pegasus International (**UPI**), a leading engineering and project management firm, to evaluate alternative routing options, execution strategy as well as detail cost estimates;[129] as well as UDA, to advise the Symbio Project team on environmental concerns and strategies.[130]

84. By late 2017 UPI, UDA and Énergie Saguenay's in-house team had confirmed that the pipeline proposal was feasible from a technical, environmental, competitive, and social impact perspective. Based on their input, Énergie Saguenay evaluated three corridor options (Northern, Central and Southern) for the pipeline's location (***see*** Figure 6 below) against a broad spectrum of factors, including the potential for aboriginal and other stakeholder acceptability, the minimization of environmental impacts, constructability, and its economic impact to the LNG project.[131]

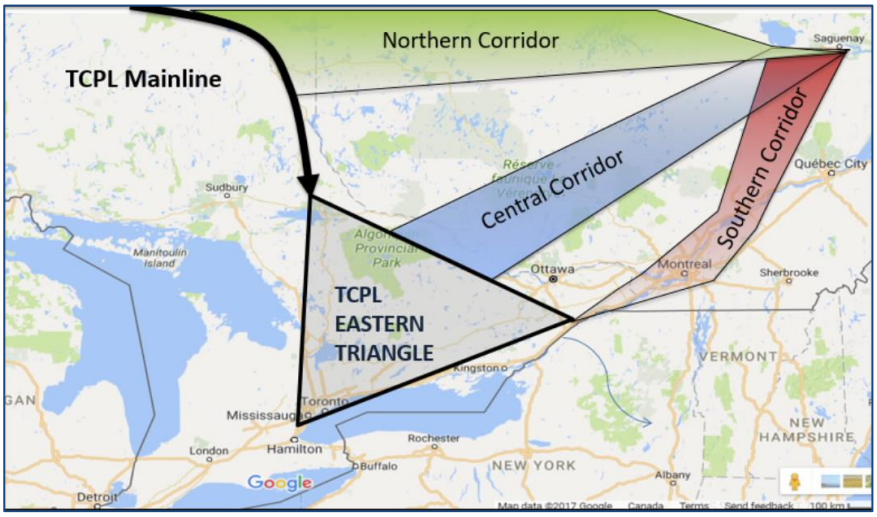


Figure 6 - Corridor Options for Gazoduq

---

128 Witness Statement of Vivek Bidwai (21 November 2023), paras. 89 *et seq*, **CWS-2**.

129 UPI, "Routing Corridor Evaluation Table - GNLQ Energie Saguenay Project" (8 December 2017), **Exh. C-00121**; UPI, "Project Execution Strategy for GNL Quebec Inc. Énergie Saguenay Project Feasibility Study" (5 January 2018), **Exh. C-00122**; UPI, "Basis of Estimate – Unclassified and Class IV Capital Cost Estimate Total Installed Cost for GNL Quebec Inc. Énergie Saguenay Project Feasibility Study" (4 January 2018), **Exh. C-00123**.

130 UDA, "Preliminary Corridor Analysis: Pipeline Component (January 2018), **Exh. C-00124**.

131 GNLQ, Memorandum, Recommendation for Gazoduc Corridor (29 April 2018), **Exh. C-00115**.

85. Applying these criteria, Énergie Saguenay selected the Northern Corridor as the most sensible routing option for the pipeline. The preferred corridor required consultation with significantly fewer private landowners; it entailed materially lower transportation tolls in TransCanada's mainline systems; and it avoided environmentally sensitive areas[132] as well as high population centres and major metropolitan areas.[133] Upon careful analysis, the Symbio Project team ultimately selected a "Study Corridor"[134] within the "Northern Alignment" route to further enhance the pipeline's prospects of social acceptability and lower costs.[135]

86. On 26 June 2018, Symbio incorporated Gazoduq Inc. in Québec, and it became the corporate vehicle for the development of the natural gas transmission line.[136] By November 2018. Gazoduq had launched both the Federal regulatory review process, and the Provincial environmental impact assessment and review procedure.

87. Thereafter, Gazoduq would refine the planned pipeline project in light of extensive consultations with the public and with indigenous communities:[137]

    a. In November 2018, Gazoduq filed a pre-application project description with the NEB;[138]

    b. In February and March 2019, Gazoduq held 17 public consultations, with more than 600 citizens and more than 130 groups from various regions along the Study Corridor;[139]

---

132 *Id.*, p. 6.

133 GNLQ, "A Sustainable LNG Project" (February 2019), **Exh. C-0075**, slides 34-35.

134 A "Study Corridor" with a width of between 30 km and 60 km that avoided the distribution ranges of woodland caribou, Lake Abitibi, the Gouin Reservoir, Lac Saint-Jean and Cree Nation traditional family hunting territories (also called traplines).

135 GNLQ, "Memorandum, Recommendation for Gazoduc Corridor" (29 April 2018), **Exh. C-00115**, pp. 4-6.

136 Gazoduq Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry (5 April 2022), **Exh. C-0017**; Gazoduq Inc., Certificate of Attestation (3 February 2023), **Exh. C-0018**.

137 Gazoduq, Detailed Project Description submitted to the Impact Assessment Agency of Canada (January 2020), **Exh. C-0067**, p. 6.

138 Gazoduq, Letter to the NEB – Pre-Application Project Description (20 November 2018), **Exh. RB-0009**.

139 Gazoduq, Appendix B (Gazoduq Project Press Releases) to the Letter to the NEB – Pre-Application Project Description Update, Board File No. OF-Fac-Gas-G430-2018-01 01, Doc. No. A99015-6 (23 April 2019), **Exh. C-00125**; Gazoduq, Detailed Project Description submitted to the Impact Assessment Agency of Canada, (January 2020), **Exh. C-0067**, p. 6; Witness Statement of Tony Le Verger (21 November 2023), para. 167, **CWS-3**.

c. Gazoduq simultaneously carried out an extensive consultation process with the numerous indigenous communities that had been identified as being potentially impacted by the Gazoduq Project; [140]

d. Gazoduq took the outcomes of these consultation processes on board when designing its Preferred Planning Area (**PPA**) within the Study Corridor, which was made public on 23 April 2019. The PPA notably avoided the vast majority of potentially sensitive areas in the Study Corridor;[141]

e. In 12 September 2019, Gazoduq tailored its proposal to spend its annual contribution of C$36 million (including tax benefits) to non-Indigenous local communities located in the PPA, based on the outcome of meetings with directly concerned stakeholders;[142]

f. Gazoduq produced and filed a Detailed Project Description (**DPD**) to the newly formed IAAC in January 2020[143] which set out the ways in which Gazoduq intended to address the issues identified by the IAAC.[144]

I. The Symbio Project team also held sustained negotiations with natural gas producers to secure the supply of low-cost Western Canadian gas to GNLQ

88. The Symbio Project team sought early-on to build relationships with natural gas producers to secure the supply of natural gas for its LNG plant and create a base for its future customers.[145] As early as 2015, the team had commenced preliminary discussions with executives from several large North American gas suppliers to assess the possibility of

---

140 Gazoduq, Appendix B (Gazoduq Project Press Releases) to the Letter to the NEB – Pre-Application Project Description Update, Board File No. OF-Fac-Gas-G430-2018-01 01, Doc. No. A99015-6 (23 April 2019), **Exh. C-00125**; Witness Statement of Denis Roux (21 November 2023), paras. 38-95, **CWS-6**.

141 Gazoduq, Letter to the NEB – Pre-Application Project Description Update, Board File No. OF-Fac-Gas-G430-2018-01 01, Doc. No. A99015-4 (23 April 2019), **Exh. C-00126**; Gazoduq, Detailed Project Description submitted to the Impact Assessment Agency of Canada, (January 2020), **Exh. C-0067**, pp. 1, 6. On 27 June 2019, Gazoduq notified the NEB by letter that: (i) the location of the link between the NGTL and the TC Energy mainline would be about 4 km south of TC Energy's compressor station in Ramore, Ontario; and (ii) the PPA width on public lands in Ontario was 400 metres on average: *see* Gazoduq, Letter to the NEB – PPA Update, Doc. No. C00168-1 (27 June 2019), **Exh. C-00127**.

142 Gazoduq, Detailed Project Description submitted to the Impact Assessment Agency of Canada, (January 2020) **Exh. C-0067**, p. 7. *See also* Radio Canada, "Gazoduq s'engage à verser 36 millions $ dans un Fonds pour les communautés" (12 September 2019), **Exh. C-00128**.

143 Gazoduq, Detailed Project Description submitted to the Impact Assessment Agency of Canada, (January 2020) **Exh. C-0067**, p. 2.

144 *See* Gazoduq, Initial Project Description of a Designated Project (10 October 2019), **Exh. C-00129**. This filing was made under the new federal environmental review regulations that came into force on 28 August 2019.

145 Énergie Saguenay – Quarterly Status Report (1 July 2015), **Exh. C-00112**, p. 5 ("It is important for GNLQ to build these relationships in advance of the negotiation of supply agreements between the suppliers and GNLQ's future tolling customers.")

signing long-term supply agreements.[146] Feedback was positive, with several firms interested in providing natural gas at competitive long-term rates.[147]

89. Once the Symbio Project team had decided to construct the Gazoduq natural gas transmission line on a route passing from Northern Ontario through Northern Québec, the team shifted its commercial from a mix of US and Canadian supply to wholly-Canadian supply. To this day, Western Canadian natural gas supplies face the basic challenge of lacking both a natural outlet for delivery of their product and a significant local market. Given that there is an overabundance of natural gas waiting to be marketed in the Western Canadian Sedimentary Basin and significant excess pipeline capacity in the Canadian Mainline system following the cancellation of Energy East,[148] natural gas suppliers were eager to enter into agreements with the Symbio Project[149] and were keenly interested in its export terminal, as it enabled them to access vast, high-value European and Asian markets.

90. Starting from 2018 and through 2022, the Symbio Project team held discussions with no less than 10-12 gas suppliers in Alberta with sufficiently strong balance sheet to support its demand, including [redacted].[150] During those discussions, several natural gas producers expressed strong interest in providing long-term gas supply to GNLQ and were willing to accept relatively [redacted] to lock in new long-term supply markets; their willingness was motivated by the opportunity to potentially share in some upside from higher-priced overseas markets.[151] In December 2019, the Symbio Project through GNLQ

---

146 Witness Statement of Vivek Bidwai (21 November 2023), para. 91, **CWS-2**. Pennsylvania's Marcellus Shale and Utica Shale are two of the largest known sources of natural shale gas within the United States, and both major suppliers of natural gas to Québec and to Ontario.

147 GNLQ, Énergie Saguenay – Quarterly Status Report (1 April 2015), **Exh. C-00130**, p. 4**.** Several major gas producers indicated the willingness to [redacted], or enter into [redacted], which was well received by LNG Buyers we met in Asia in February and in Europe in March.

148 GNLQ, "A Sustainable LNG Project" (February 2019), **Exh. C-0075**, slide 30.

149 As explained above, the displacement of Canadian natural gas by the dramatic increase of production and export of shale gas in the United States in the mid-2000s has resulted in an overabundance of natural gas in Western Canada. Moreover, the challenges faced by LNG export terminals in Western Canada meant that there was considerable surplus of low-cost natural gas in the Western Canadian Sedimentary Basin and the AECO spot price was considerably lower as compared to its US counterpart.

150 These gas suppliers included: [redacted]. *See "Symbio - Summary of Commercial Counterparties.xlsx",* **Exh. C-00131**, tab "Gas Suppliers". The table does not account for initial discussions with smaller companies that did not have capability to supply our long-term needs, as well as several foreign state-owned and multinational energy companies that owned Canadian gas assets that we planned to approach in the future.

151 Witness Statement of Vivek Bidwai (21 November 2023), para. 102, **CWS-2**.

entered into a twenty-year gas supply agreement term sheet with [redacted], and in March 2020, GNLQ signed a similar term sheet with [redacted].[152]

91. By the time when the Québec and Federal Government rejected the Project, the Symbio Project team was also in advanced discussions with several other gas suppliers interested in concluding formal term sheet agreements.[153] For example, in 2020 the Symbio Project team entered into discussions with Alberta's Deputy-Minister of Energy and the [redacted].[154]

92. Between 2020 and 2021, the Government of Alberta and [redacted] considered different forms of support to the Symbio Project.[155] For example, [redacted] commenced due diligence for the purposes of investing in the Gazoduq pipeline, although this proposal did not eventually move forward due to the Covid-19 pandemic. Additionally, in 2020 [redacted][156] and was in advanced negotiations with the Symbio Project team over a term sheet agreement by the time the pandemic began.[157] [redacted].[158]

93. The negotiation and conclusion of term sheets and supply agreements with gas suppliers at such early stage was an important indication of the strong market support to the Symbio Project. It is atypical for this kind of projects to have supply agreements in place so far ahead of the final investment decision (**FID)**, not least in such level of detail and commitment. The enthusiasm expressed by Western Canadian gas suppliers – including [redacted] – in the Symbio Project and their eagerness to conclude term sheets and supply agreements ensured that the Symbio Project would enjoy a secure and steady supply of low-cost natural gas from Western Canada [redacted].

---

152 Gas Term Sheet (GNLQ and [redacted]) (March 2020), **Exh. C-00132;** [redacted] – GNLQ Gas Supply Term Sheet (Executed) (18 December 2019), **Exh. C-00133**.

153 Witness Statement of Vivek Bidwai (21 November 2023), Section VI, and revised list of commercial counter-parts, **CWS-2**.

154 Witness Statement of Vivek Bidwai (21 November 2023), Section VII.D, **CWS-2**.

155 Witness Statement of Vivek Bidwai (21 November 2023), Section VII.D, **CWS-2**.

156 [redacted]

157 *See* Email from David James to Vivek Bidwai and [redacted], **Exh. C-00134**; Email from Vivek Bidwai to [redacted], **Exh. C-00135**. *See also* GNLQ, "[redacted] Proposal" (June 2020), **Exh. C-00136**, slides 16-18, slides 24-35.

158 [redacted] (17 June 2020), **Exh. C-00137**.

J. GNLQ developed early on its bespoke model contract and term sheet which leveraged its unique advantages, and built a strong foundation for future commercial negotiations with LNG off-takers

94. Another essential component of the Symbio Project was securing offtake agreements with interested LNG customers abroad. As early as in 2014, the Symbio Project team had conducted a thorough analysis of the state-of-play in the LNG market and an overview of the existing commercial structures,[159] and initiated preliminary discussions with LNG buyers around the same time in order to solicit their views on the market's state-of-play.[160] In response to feedback from potential off-takers,[161] Symbio went on to develop a bespoke model Sale and Purchase Agreement (**SPA**) on a "Delivered ex Ship" (**DES**) basis.[162] The Project's competitors along the US Gulf Coast typically adopted a model known as free-on-board (**FOB**), whereby the off-taker assumes ownership of the natural gas once it is loaded on the ship at the export terminal.[163] By contrast, Symbio's commercial structure provided that the Project itself would *also* charter specialized ships that would deliver its LNG product to the customer's market destination, in addition to sourcing and liquefying natural gas.[164]

95. The Symbio Project's commercial model was unique. It leveraged the Saguenay region's comparative advantages *vis-à-vis* its competitors, including its 40% closer proximity to Europe compared with other LNG export terminals in the U.S. Gulf Coast; significantly lower cost of gas sourced from Western Canada; lower toll levels on TransCanada's mainline; and improved efficiency and energy demand for the natural gas transmission line and liquefaction facility.[165] Drawing on these advantages, Énergie Saguenay developed an innovative price mechanism that provided as much flexibility to customers as possible while providing upside potential to Western Canadian gas producers and providing the Project good guaranteed margins combined with economic upside.[166] On that basis, Énergie

---

159 Freestone LNG, "Commercial Approach" (10 January 2014), **Exh. C-00138**, pp. 1-2. *See also* GNLQ, "Énergie Saguenay LNG Project, Confidential Private Placement Memorandum" (November 2016), **Exh. C-0074**, p. 78.

160 Freestone LNG, "Commercial Approach" (10 January 2014), **Exh. C-00138**, pp. 1-2. *See also* GNLQ, "Énergie Saguenay LNG Project, Confidential Private Placement Memorandum" (November 2016), **Exh. C-0074**, p. 78; LNG Québec Limited Partnership, "Private Placement Memorandum" (January 2019), **Exh. C-00139**, p. 50.

161 Witness Statement of Vivek Bidwai (21 November 2023), para. 120, **CWS-2.** *See*, for example, feedback from a European Utility in GNLQ, "European Natural Gas Market" (March 2017), **Exh. C-00140**, slide 10.

162 LNG Québec Limited Partnership, "Private Placement Memorandum" (January 2019), **Exh. C-00139**, p. 50.

163 Witness Statement of Vivek Bidwai (21 November 2023), para. 120 *et seq.*, **CWS-2.**

164 Witness Statement of Vivek Bidwai (21 November 2023), paras 210 *et seq.*, **CWS-2.**

165 GNLQ, "A Sustainable LNG Project" (February 2019), **Exh. C-0075**, slide 56

166 Witness Statement of Vivek Bidwai (21 November 2023), Section V.C, **CWS-2**.

Saguenay developed its model SPA Term Sheet, which served as the basis of subsequent discussions with potential customers,[167] and incorporated this innovative pricing formula.[168]

96. LNG off-takers were very receptive to this new price mechanism, [redacted].[169] From about July 2015, the Symbio Project team began meeting LNG off-takers throughout Asia and Europe, who showed strong interest towards signing potential offtake agreements in the mid-term.[170] By 2022, and often with the assistance of Canadian trade commissioners,[171] the Symbio Project team had engaged with approximately 38 potential off-takers, and entered into term sheet negotiations with 25 of them.[172] Many of these remarked that GNLQ was a "benchmark-setting low-GHG emissions" project, "cost-competitive", and "one of the best LNG export projects on the planet".[173] They were therefore strongly interested in entering into binding off-take agreements.

97. As the Project progressed towards reaching the stage of FID, these early commercial efforts bore fruit. In 2022, — despite Québec and Canada's decisions to reject the Project — GNLQ signed a detailed multi-billion-dollar term sheet [redacted],[174] as well as an SPA [redacted].[175] Many other agreements were agreed in principle, but never officially signed, following the Québec and Federal Governments' decisions to refuse the Project.[176] For

---

167 *See, e.g.*, Letter from Jim Illich to [redacted] (5 June 2017), **Exh. C-00142**.

168 Witness Statement of Vivek Bidwai (21 November 2023), Section V.C, **CWS-2.**

169 *Id.*

170 Witness Statement of Vivek Bidwai (21 November 2023), para. 141, **CWS-2.** *See also* Énergie Saguenay – Quarterly Status Report (1 October 2015), **Exh. C-00143,** p. 5.

171 *See* "Symbio - Summary of Commercial Counterparties.xlsx", **Exh. C-00131**, tab "Trade Commissioners".

172 Witness Statement of Vivek Bidwai (21 November 2023), para. 146, **CWS-2**.

173 *Id. See also* GNLQ, "A Sustainable LNG Project", February 2019, **Exh. C-0075**, slide 54.

174 GNL Quebec - [redacted] SPA Term Sheet FINAL (Executed) (28 July 2022), **Exh. C-00144**. *See also* [redacted] and GNLQ Draft SPA (September 2022), **Exh. C-00145**. [redacted].

175 LNG SPA (GNLQ and [redacted]) (June 2022), **Exh. C-00146.** *See also* [redacted] - GNL Quebec SPA Term Sheet (Confidential) – Executed (25 February 2019), **Exh. C-00147**. [redacted] agreed to a substantial price increase in the binding agreement.

176 Witness Statement of Vivek Bidwai (21 November 2023), para. 146, **CWS-2**.

example, GNLQ was in advanced negotiations and close to finalising commercial terms with large European companies such as [redacted].[177]

98. Given that most off-take agreements are entered into once a project is less than 9-18 months away from FID, the fact that GNLQ had concluded and negotiated offtake agreements at such an early stage was a clear indication of the market's strong interest in Énergie Saguenay's LNG product.[178]

K. From the outset, the Symbio Project was strongly encouraged by local and political stakeholders, including by the Québec Government

99. From the early stages of project development, the Symbio Project received strong and consistent encouragement from local stakeholders and from both Québec and federal government representatives.

100. As early as December 2013, in connection with their initial due diligence, senior members of the Symbio Project team visited the Chicoutimi borough in the City of Saguenay, to meet with local political representatives and gauge their potential level of support for the Project. GNLQ saw this as crucial to its plans, as it saw the Project as a partnership with the place and region where it sought to proceed. GNLQ team members first met with a number of SPA officials, including President and General Director Alain Bouchard, and Commercial and Project Director Carl Laberge, all of whom were impressed by the plans and expressed their enthusiasm for the Project.[179] Soon after, the GNLQ team also met with then Saguenay Mayor Jean Tremblay. He likewise was highly supportive, commenting that the Project was "*going to be part of what helps [them] put the Saguenay back on the map*".[180]

101. The GNLQ team also sought wider political support for the Project at the provincial and federal levels, and quickly met with success. In December 2013, Jim Illich met with Stéphane Bédard of the Parti Québécois, then Member for Chicoutimi in the Québec

---

177 Draft - First LNG Offtake Term Sheet (Redline - [redacted] - GNLQ FOB Term sheet) (February 2019), **Exh. C-00148.**

178 Witness Statement of Vivek Bidwai (21 November 2023), paras. 148, **CWS-2**.

179 *See, for example,* the public comments made by Ghislain Harvey, Director of Promotion Saguenay, on the occasion of the public launch of the Project on 20 June 2014 in *Le Quotidien* (« La présentation par LNG Québec de son projet de terminal d'exportation de gaz naturel liquéfié réjouit le directeur général de Promotion Saguenay, Ghislain Harvey, qui déclare que Port Saguenay sera enfin sur la « map ». Présent lors de la présentation faite aux médias, M. Harvey soutient que l'organisme qu'il dirige n'a jamais eu dans ses cartons un projet aussi solide »): Énergie Saguenay, "Media Report on launching" (June 2014), **Exh. C-0042**, p. 4. *See further id.*, p. 8, comments made by Serge Simard, Member of the National Assembly of Québec for the electoral district of Dubuc in the Saguenay–Lac-Saint-Jean region on the same day in *Le Journal de Québec* (« C'est animant pour la région, a lancé M. Simard. . . lorsqu'un investisseur vient de l'extérieur pour regarder la possiblité d'investir son argent chez nous, il faut y croire et il faut l'accompagner. ») and comments made by Saguenay Mayor Jean Tremblay (« Dans une capsule vidéo diffusée depuis hier sur le site de la Ville de Saguenay, le maire réagit avec enthousiasme au projet. « C'est un projet extraordinaire, dit Jean Tremblay. C'est 7G$» and « Je remercie les gens de Port Saguenay, et l'équipe de Promotion Saguenay dirigée par Ghislain Harvey pour leur travail, ajoute le maire. On est parti vers un développement spectaculaire. »)

180 Witness Statement of Jim Illich (21 November 2023), para. 40, **CWS-1**.

National Assembly as well as Government House Leader. Mr. Bédard expressed his support for the GNLQ Project, confirming the same support would be available from the local Saguenay community.[181] Around the same time, Jim Illich discussed the Project with Denis Lebel, then Federal MP for Robeval-Lac-Saint-Jean and Minister of Infrastructure, Communities and Intergovernmental Affairs. He too was supportive, offering to make a connection to the then Federal Minister for Natural Resources.[182]

102. Over the course of 2014, the Symbio Team took part in a series of further meetings with provincial ministers, local politicians, and regional mayors, all of whom confirmed their strong support for the Project.[183] By October 2014, Mr. Jocelin Dumas of the Québec Ministry of the Economy, Innovative and Exports had issued a formal letter highlighting, in light of the expected economic benefits for Québec, the Québec Government's support « envers [le] projet [GNLQ] d'implantation d'un terminal de liquefaction de gaz naturel au Port de Saguenay … [et] pour la concretisation [du] projet ».[184]

103. The Québec Government even proceeded to create a special platform – an Inter-Ministerial Steering Committee (**IMC**) – for the Project, which held its first meeting on 17 September 2014.[185] Comprised of representatives of key Québec ministries and public corporations, the IMC was dedicated to facilitating and assisting the Symbio Project to advance through various stages of approval in the most efficient and effective manner possible. It proceeded to meet approximately up to once every other month for the next 5 years, with the express mandate of facilitating the Project's progress.[186]

104. The IMC continued to meet right up to June 2021. Topics discussed during its meetings were wide-ranging. They notably discussed LNG demand and supply, pricing and trends; the status of environmental review and approval processes; the development of the pipeline aspect of the Project; as well as social acceptability and consultations with First Nations and local communities. The underlying message was that the Québec Government was

---

181 Email exchange, "Bedard Meeting" (18 December 2013), **Exh. C-00149.** Witness Statement of Jim Illich (21 November 2023), para. 25, **CWS-1**.

182 Email exchange, "Bedard Meeting" (18 December 2013), **Exh. C-00149**. Witness Statement of Jim Illich (21 November 2023), para. 25, **CWS-1**.

183 Email from Marie-Claude Lavigne to GNLQ team "Overview of GR activities over the last few weeks" (22 September 2014), **Exh. C-00150**.

184 Québec Ministry of Finance, Letter to GNLQ (unofficial translation from French) (24 October 2014), **Exh. C-00151.**

185 The IMC held its first session on 17 September 2014. *See* Énergie Saguenay, "Présentation au comité interministériel du gouvernement du Québec dans le cadre du développement du projet Énergie Saguenay de GNL Québec» (17 September 2014), **Exh. C-00152**.

186 [redacted]

supportive of the Project and was seeking to facilitate itself approval.[187] As Mr. Le Verger, who participated in a number of these IMC meetings, recalls: « [l]'ambiance était plutôt très collaborative et les participants cherchaient plutôt à savoir comment ils pouvaient aider ».[188]

105. Over the years of the Symbio Project's development, representatives and members of the Québec as well as Federal Governments, and in particular Québec Premier François Legault, would repeatedly express statements of support for the Symbio Project. The following is a non-exhaustive overview of the kinds of supportive statements politicians made about the Project:

a. On 21 December 2015, in an interview with Radio-Canada, former Québec Premier Couillard singled out the Symbio Project as the LNG project for praise. In particular, he highlighted the Project's alignment with energy transition as well as its 'exemplary' approach to building stakeholder support –

> "… [Le] premier ministre donne son appui au projet de terminal d'exportation de gaz naturel liquéfié aux installations portuaires de Grande-Anse. Selon Philippe Couillard, le projet privé de 7 milliards de dollars cadre dans le développement d'une énergie de transition. Il affirme que GNL Québec, qui travaille à la réalisation du projet Énergie Saguenay, se comporte de façon exemplaire en consultant les élus et les citoyens. « D'autres auraient avantage à prendre modèle sur cette façon de faire … quand on bâtit un consensus régional comme ils sont en train de faire, ça part mieux les choses. » "[189]

b. On 13 April 2016, Sylvain Simard, Member of the Québec National Assembly for Dubuc in the Saguenay-Lac-Saint-Jean region, lauded the Symbio Project for promoting the environment as well as economic development –

> « … [P]lusieurs projets sont en développement, dont quelques-uns afin d'offrir un plus grand accès au gaz naturel. Il y a, par exemple, un projet qui me tient à coeur, … le projet d'Énergie Saguenay, qui veut construire un complexe de

---

187 Documents in our possession show that IMC meetings took place during the following months: September 2014; October 2014; November 2014; December 2014; February 2015; March 2015; May 2015; June 2015; August 2015; October 2015; November 2015; January 2016; April 2016; June 2016; July 2016; August 2016; September 2016; November 2016; January 2017; March 2017 (twice); May 2017; June 2017; February 2018; March 2018; May 2018; July 2018; September 2018; October 2018; January 2020; September 2020; and June 2021. It is very likely that IMC meetings continued to take place on monthly basis in 2019, 2020 and 2021. To the extent that any additional IMC meetings took place during months other than those previously set out, it would be helpful to receive further corroboration to this effect from Symbio.

188 Witness Statement of Tony Le Verger (21 November 2023), para. 30, **CWS-3**.

189 Radio-Canada, « Philippe Couillard fait son bilan de 2015 pour le Saguenay-Lac-Saint-Jean », 21 Décembre 2015, **Exh. C-0023**. See also the statements made by Philippe Couillard at the radio show *L'Heure de Pointe* on ICI Radio-Canada Saguenay (21 December 2015), **Exh. C-0055** ("Le gaz naturel a encore de l'avenir comme énergie de transition. Moi je crois que d'ici la fin du siècle, on aura une économie en terme énergétique totalement transformée avec beaucoup moins ou presque plus du tout d'hydrocarbures, mais le gaz naturel va nous permettre d'assurer cette transition là. Donc l'avenir est bon pour les prochaines décennies pour le gaz naturel.") *See also* the remarks made by Premier Couillard at the radio show *Le Show du Matin*, on KYK Saguenay (16 February 2016) (audio - **Exh. C-0056**) (transcript - **Exh. C-0057**) ("on considère le gaz naturel comme une forme d'énergie de transition qui est très importante, notamment le gaz naturel liquéfié.")

> liquéfaction de GNL sur le terrain de Grande-Anse, un port en eau profonde à Saguenay …
>
> … ce projet situé à Saguenay est excellent pour le Québec. La raison … c'est un investissement de 7,5 milliards de dollars. … le projet de GNL, c'est 7,5 milliards de dollars, qui peut créer 4 000 emplois pendant la construction, 800 emplois au Québec pour l'exploitation de l'usine de liquéfaction, dont 300 permanents sur le site annuellement. Ça, c'est des projets … qui sont promoteurs au niveau environnemental, mais qui sont aussi promoteurs pour une région comme la mienne.
>
> Le marché du carbone peut être un facteur favorisant l'émergence des projets environnementaux, c'est-à-dire un projet comme le GNL, considérant... la substitution du diesel, du mazout au gaz naturel peut devenir économiquement rentable, profitable pour les entreprises visées et véritablement très profitable pour l'environnement. Non seulement les entreprises qui opteront pour le gaz naturel feront des économies, mais elles allégeront aussi leur empreinte environnementale. »[190]

c. On 16 November 2016, Jim Illich held a series of meetings with the Pipelines, Gas and LNG Division of NRCAN and Canadian Minister for Natural Resources Jim Carr. High-level NRCAN executives expressly informed Jim Illich that they saw gas as "a transitional less emitting source of energy" and emphasized the overabundance of natural gas in Canada, the "need to get it to market," and that pipelines and LNG plants like our Project were "key" to implementing that policy [191]

d. On 20 September 2017, François-Philippe Champagne, Federal Minister of International Trade, indicated strong support for the Symbio Project, so much so that he was enthusiastic to serve as its unofficial "LNG Marketing Manager" in his discussions with other countries.[192] The Minister offered "all his support" in developing this Project and proposed up to nine ways that he and his team proposed to assist us with LNG buyers abroad, including by utilizing the "whole Global Affairs network, including embassies and consulates" and "leveraging 161 Canadian Gov[ernmen]t offices globally" to support us with securing offtake agreements and financing.[193]

---

190 Québec National Assembly, Journal des débats de la Commission des transports et de l'environnement 41e législature, 1re session (20 May 2014 to 23 August 2018), **Exh. C-00155**.

191 Witness Statement of Jim Illich (21 November 2023), para. 143, **CWS-1**.

192 Witness Statement of Jim Illich (21 November 2023), para. 178, **CWS-1.**

193 *See* contemporaneous account of the meeting, « Rencontre Ministre François-Philippe Champagne, Ministre du Commerce international,20 septembre 2017, 15h30 pour 40 minutes », **Exh. C-0383**, pp. 2-3. 1. More specifically, he offered to: (1) Introduce me and GNLQ to the heads of both CCC and EDC; (2) Ask his department and specifically the regional desks for Asia and Europe to work with GNLQ; (3) Include me and GNLQ in all trade missions to countries that are potential clients – starting with Argentina to which he was travelling to in the next weeks; (4) Personally introduce me to Mr. Cho (sp) (Former Korean and ex-CEO of KoGas) and arranging a dinner with Cho in Seoul; (5) Introduce us to other LNG Buyers/key clients. Notably, Sara Wilshaw mentioned that the Government could persuade countries like India to commit to long term contracts necessary for Project Financing; (6) Introduce us to major investors such as Middle East fund –

e. In the lead-up to the October 2018 Québec provincial elections, former Premier Couillard reaffirmed his support for the Symbio Project, noting that it offered an undeniable economic advantage the Saguenay region – he said:

> « Plus près dans la région, nous continuerons à appuyer les grands projets comme … GNL[Q] » .[194]

f. On 3 June 2019, Premier Legault defended before the Québec National Assembly the Énergie Saguaney Project as « un projet important » for its potential to reduce global GHGs as well as to create thousands of jobs for the region –

> « … GNL[Q], c'est un projet important. C'est un projet qui, au total, va réduire les GES sur la planète … Au total, on parle d'une réduction très importante des émissions de GES pour notre planète. Donc … c'est un projet important. C'est un projet, en plus, qui va créer des milliers d'emplois très payants en région. Pour nous, c'est important.» .[195]

g. On 6 June 2019, Jonatan Julien, the Québec Minister for Natural Resources, expressed his unequivocal support for the Symbio Project in the Québec National Assembly on the basis of its expected environmental and economic benefits –

> « Ça va réduire de manière formidable, formidable, les GES à travers le monde, on va en faire la démonstration, et c'est sur cette base environnementale que la décision sera prise. Mais 14 milliards de dollars d'investissements au Québec, on est pour ça, on est très pour ça. » .[196]

h. On 16 January 2020, Premier Legault, after meeting the Symbio Project's personnel, posted a supportive tweet outlining its potential advantages of the in job creation as well as GHG reduction –

> « Bonne rencontre avec les dirigeants du projet Énergie Saguenay. Un projet d'investissement majeur: 4000 emploisdurant la construction et 250 emplois permanents à 100 000 $ par année. Le projet réduirait les GES de 28 millions en remplaçant des centrales au charbon. » [197]

Mubadala; (7) Leveraging 161 Canadian Govt offices globally; (8) Personally make any introduction, call, push or nudge to any foreign government that might be a clients or investor; (9) Working hand in hand with the Québec Govt regarding our Government-to-Government strategy with LNG buyers the highest levels, in order to orchestrate meetings and strategies to support our offtake and investment strategies, and support us in securing binding offtake agreements.

194 Journal de Québec, « GNL Québec – des citations qui prouvent que le gouvernement a complètement changé d'idée » (21 July 2021), **Exh. C-0024**.

195 Québec National Assembly, Journal des débats (Hansard) of the National Assembly 42nd Legislature, 1st Session (from 27 November 2018 to 13 October 2021), **Exh. C-00156**.

196 Le Devoir, « Usine de GNL à Saguenay: la CAQ dissipe les doutes » (6 June 2019), **Exh. C-00157**.

197 Le Devoir, « Projet Énergie Saguenay, des prévisions qui restent à démontrer » (20 January 2020), **Exh. C-00158**.

i. On 4 February 2020, Premier Legault again defended before the Québec National Assembly the Symbio Project's GHG reduction capacity as contributing to an effort to save the entire planet –

> « … le projet de GNL Québec, autant l'oléoduc que l'usine, on parle d'un projet de 14 milliards de dollars, 4 000 emplois payants … ce qui est dans le projet, ce qui est prévu, c'est qu'il y aurait une réduction de 28 millions de tonnes de GES par année en Europe. Donc, plus 400 000 tonnes au Canada, moins 28 millions de tonnes des GES en Europe, en Asie … Donc, je ne sais pas, là, si je suis capable de prouver ça à la cheffe de Québec solidaire [i.e., Manon Massé]. Est-ce qu'elle va être ouverte à un projet qui pourrait aider la planète ou si elle veut seulement sauver le Québec? Elle ne veut pas sauver l'ensemble de la planète? »[198]

106. From the outset up to 2020, the Québec and Federal Government therefore repeatedly and publicly supported the Symbio Project, encouraging and inciting the investment to proceed, lauding both its economic and its environmental benefits and underlining the Project's alignment with government policy.

L. The Symbio Project team paid close attention to the concerns of First Nations, none of whom voiced any firm opposition to the Project

107. As early as June 2014, the Symbio Project team initiated dialogue through letters, calls and meetings with the Innu First Nations of Essipit, Mashteuiatsh and Pessamit (**Innu First Nations**), the main indigenous groups impacted by its Project. By November 2014, Énergie Saguenay had set up a consultative and monitoring committee with representatives from the Innu First Nations, whose aim was to maintain an open and active dialogue.[199] The committee meet on four more occasions over the course of 2014 and 2015,[200] and on at least fourteen further occasions between March 2016 and September 2018.[201]

108. Demonstrating the success of their engagement, the Symbio Project team achieved a significant milestone in First Nations relations on 26 May 2015 when they signed a Joint Cooperation Agreement with the Innu First Nations (the **JCA**).[202] The JCA established a consultative process to account for First Nations' interests, preoccupations and rights throughout GNLQ's project planning and regulatory phase, up to the negotiations of the

---

198 Québec National Assembly, Journal des débats de la de l'Assemblée Le mardi, Vol. 45 N° 95 (4 February 2020), **Exh. C-00159**.

199 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), pp. 103-104 **Exh. C-0043**.

200 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043** p. 105.

201 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043** p. 105.

202 Joint Cooperation Agreement between GNLQ and the Innu First Nations of Essipit, Mashteuiatsh and Pessamit (26 May 2015), **Exh. C-00160** *see also* WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, pp. 43, 104-105, 111.

Impact and Benefits Agreement (**IBA**). The First Nations in turn undertook to cooperate with GNLQ as part of its interactions with government authorities and third parties. In parallel, GNLQ tasked a specialised First Nations and community consultation consultancy firm, Transfert Environnement et Société, with implementing a Traditional Land and Resource Use Study in cooperation with the First Nations, as part of the regulatory process. The Symbio Project team ultimately filed that Study with the Québec Government as part of the GNLQ Environmental Impact Statement, in February 2019.[203]

109. The Symbio Project team pursued this same collaborative approach each time the Federal Government updated its requirements on First Nations consultations post-issuance of regulatory guidelines, adding new groups. For example, in August 2018 the IAAC notified the Symbio Project team of the Huron-Wendat First Nation's interest in being consulted in the Project.[204] In response, Symbio formally launched consultations with them,[205] [redacted].[206] Énergie Saguenay likewise made *bona fide* efforts to dialogue with the Malécite First Nations after the IAAC unexpectedly requested the same in late November 2020, despite this particular group showing no particular interest in or concern about the Project, either prior to or following notification.[207]

110. The Symbio Project team paid close, regular and genuine attention to First Nations interests from the outset and throughout the Project. According to Tony Le Verger, for almost the entire life of the Project « [i]l n'y a pas eu de questionnement majeur de la part des communautés autochtones au sujet du Projet GNLQ ».[208] As the Québec Commission of Inquiry of the Bureau d'audiences publiques sur l'environnement (**BAPE**) on the GNLQ Project would go on to summarise in its final report:

> « [s]elon les Premières Nations innues, les activités de consultation de [GNLQ] envers elles ont été régulières, transparentes, empreintes de bonne foi, de collaboration et de recherche des intérêts communs et, conséquemment, elles

---

203 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, pp. 10, 105, 605, 607, 743. TRANSFERT ENVIRONNEMENT ET SOCIÉTÉ. 2018. Étude sur le savoir autochtone et l'utilisation des ressources et du territoire dans le cadre du projet Énergie Saguenay de GNL Québec (April 2018), **Exh. C-00161**, Annexe 4

204 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, pp. 10, 103, 106.

205 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, pp. 10, 35, 103.

206 [redacted], **Exh. C-00162**.

207 Sarah Zammit (AEIC), Lettre à Tony Le Verger concernant l'ajout de la Première Nation Wolastoqiyik (Malécite) Wahsipekuk à la consultation portant sur l'évaluation environnementale du projet Énergie Saguenay (25 November 2020), **Exh. C-00163**; Witness Statement of Tony Le Verger (21 November 2023), para. 44, **CWS-3**; Witness Statement of Denis Roux (21 November 2023), para. 21, **CWS-6**.

208 Witness Statement of Tony Le Verger (21 November 2023), para. 45, **CWS-3**.

accueillent favorablement le projet en ce qui a trait à la prise en compte de leurs droits et leurs intérêts. »

M. The Project was sensitive to the concerns of local communities from the very beginning

111. The Symbio Project team also initiated a parallel dialogue with local communities from an early stage and throughout the Project, achieving a strong level of engagement. As noted above, their first stage engagement in the Saguenay region was with local political levels, as early as December 2013, to assess whether the Project would meet with support, and they continued to pursue such discussions into 2014 and beyond. By September 2015 Énergie Saguenay had set up a full-blown regional consultative committee, providing a broader group of interested residents to raise and discuss issues such as the environment and economy in connection with the Project.[209] These consultative meetings provided a platform for grassroots members of the local communities to obtain information about the Symbio Project; to articulate concerns; to better assess its expected environmental impacts; and to propose potential mitigation measures.[210]

112. These consultative meetings were held regularly.[211] The community's feedback was regularly used to inform the facility's design. For example, in April 2018, GNLQ convened Open House sessions that welcomed members of the local community. Concerns from these consultations were passed on for the GNLQ engineering team's consideration.[212] This was no mere pro forma consultation - in response to suggestions made during the process, GNLQ undertook in particular to resituate the liquefaction plant to a less visible location, to

---

209 Letter from Énergie Saguenay to Minister Benoit Charette "Demande d'audiences publiques – Projet Énergie Saguenay » (6 January 2020), **Exh. C-00164**; GNLQ, compte-rendu – première réunion du comité consultatif (29 septembre 2015), **Exh. C-00165**.

210 Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la rencontre tenue à l'Auberge des 21 » (24 November 2015), **Exh. C-00166.**

211 GNLQ, « Mise à jour sur le projet Énergie Saguenay et bilan de la consultation préalable Compte rendu » (3 June 2015), **Exh. C-00167**; Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la rencontre tenue à l'Auberge des 21 » (24 November 2015), **Exh. C-00166** Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue à la salle Tipi de l'hôtel le Montagnais » (29 September 2015), **Exh. C-00165**; Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue Auberge La Tourelle » (27 October 2015), **Exh. C-00168; Exh. C-00169,** Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue Auberge La Tourelle » (26 April 2016), **Exh. C-00170;** Energie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue à l'Hôtel le Montagnais » (10 March 2016), **Exh. C-00171**; Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue à l'Auberge des 21, La Baie » (22 November 2016), **Exh. C-00172** ; Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue à l'Hôtel le Montagnais, Chicoutimi » (15 February 2017), **Exh. C-00173**; Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue Hôtel Chicoutimi, Chicoutimi » (11 April 2017), **Exh. C-00174**; Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue Hôtel de ville de Saint-Fulgence, Saint-Fulgence » (26 September 2017), **Exh. C-00175** ; Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue Auberge des 21, La Baie » (21 November 2017), **Exh. C-00176.**

212 Énergie Saguenay, « Comité Consultatif Sur Le Complexe De Liquéfaction De Gaz Naturel, Compte rendu de la réunion tenue Auberge des 21, La Baie » (21 November 2017), **Exh. C-00177.**

reconfigure the layout to reduce visual impacts as well as to evaluate nocturnal light impacts as part of its environmental impact assessment – as examples among others of how the team listened to the concerns of the community.[213]

113. The Symbio team's continuous engagement with local communities paid dividends. In 2019, the City of Saguenay as well as several neighbouring municipalities adopted resolutions expressing their supporting for the Project. On 10 July 2019, Saguenay Mayor Josée Néron sent a lettre to Énergie Saguenay affirming a municipal resolution that the city «appuie dans la mesure où ils respectent toutes les exigences réglementaires environnementales, le développement des projets sur le territoire de la zone industrialo-portuaire qui permettent la croissance économique et socialement responsable de la région».[214]

114. Additionally, and as explained in the section below in greater detail, when the Québec Government asked Énergie Saguenay to demonstrate the social acceptability of the Project, Énergie Saguenay was able to provided overwhelming evidence of the local communities' support.

N. Hydro-Québec's repeated commitments to supply the Symbio Project with hydro-electricity at discounted rates further demonstrate the Québec Government's support

115. The fundamental premise of the Symbio Project as a source of ultra-low-GHG-emitting LNG was its access to abundant hydroelectricity. Accordingly, the Project achieved an important early milestone — and a crucial sign of Québec' political support — when Hydro-Québec (**HQ**), a public utilities corporation 100% owned by the Québec Government, at the then Ministère de l'Énergie et des Ressources Naturelles (**MERN**), made repeated commitments to provide the renewable energy the Project needed – and at a discounted rate. Given HQ's role as a vector of the Province's economic development, the Symbio Project could hardly have hoped for a stronger signal of support from the Québec Government. This support was repeatedly shown throughout the development of the Project.

116. Given its crucial impact on the feasibility of the Project, the Symbio Project team made its initial approach to HQ around April 2014, and by June 2014, had obtained from HQ a completed exploratory connection study to confirm that it could build the type of transmission line necessary to provide the requisite amount of energy to power the Project.[215] In September 2014, HQ went on to produce a planning study estimating the costs

---

213 Énergie Saguenay, «Un projet bonifié qui aura des retombées économiques de plus de 800 M$ par année » (October 2018), **Exh. C-00178**.

214 Ville de Saguenay Letter to Pat Fiore (10 July 2019), **Exh. C-00179.**

215 Hydro-Québec Trans-Énergie, Summary of the exploratory study for the Freestone LNG project located in Grand-Anse, Saguenay (Québec), (6 June 2014), **Exh. C-00180**.

and duration of the pre-project and project phases for connecting the Project to the HQ transmission network.[216]

117. In July 2015, the MERN confirmed the feasibility of connecting the Symbio Project to the HQ transmission network. Moreover, MERN confirmed that HQ could supply the Project an energy block of 550 MW for a period of 20 years.[217] The Québec Government went on to renew this offer multiple times over the lifetime of the Project.

118. Reinforcing the support this commitment reflected and its contribution to overall Project economics, as of 29 August 2016 the Québec Government committed to offering a discounted electricity rate over a seven-year period, in addition to its prior offer.[218] Again, Québec repeated this offer at regular intervals over the lifetime of the Project, including as late as October 2020.[219]

119. HQ and Énergie Saguenay worked closely and intensively together over the years, seeking to complete as many studies and stages as possible to clear the way for the construction of the hydroelectricity transmission line linking the Project to the existing Québec grid. Notably, they (i) signed the Pre-Project Agreement in November 2018, which set out a detailed work plan, timeline and initial costs (Can$ 2.6 million) payable by GNLQ to HQ;[220] and (ii) signed Amendment No. 1 to the Pre-Project Agreement in January 2021 to settle payment of HQ's excess costs and relaunch works suspended as a result of the COVID-19 pandemic.[221]

120. In the period leading up to July 2021, the Symbio Project team and HQ continued their planning discussions, including negotiations for a second amendment to the Pre-Project Agreement. Both agreed to relaunch consultations and terrain studies in the summer of 2021, which would have fit the overall schedule of the Project's development, construction and

---

216 Étude de planification portant sur le raccordement d'un projet de liquéfaction de gaz naturel (GNL) à Grande-Anse au Saguenay du promoteur Freestone International Inc. au réseau de transport d'Hydro-Québec, (September 2014), **Exh. C-00181**.

217 Lettre du MERN (L. Asselin) à GNLQ (M. Gagnon) – Projet de raccordement d'un projet de liquéfaction de gaz naturel à Grande-Anse au Saguenay (23 July 2015), **Exh. C-00182**.

218 [redacted]

219 Luce Asselin (MERN), Lettre à Pat Fiore (GNLQ) (26 October 2020), **Exh. C-00184**.

220 Entente d'avant-projet en haute tension entre GNL Québec et Hydro-Québec (13 November 2018), **Exh. C-00185**.

221 Amendement No. 1 à l'Entente d'avant-projet entre GNLQ et HQ pour une installation permanente en haute tension (5 January 2021), **Exh. C-00186**.

start of operations.[222] However, as described further below, these plans ultimately never came to pass.

O. The Québec Government further expressed support through its repeated proposals to invest in the Project itself

121. As early as 2014, the Québec Government gave Énergie Saguenay a further confirmation of its support for the Project, by making a spontaneous offer to provide the Énergie Saguenay Project with public funding.[223] This kicked off a series of on-again, off-again exchanges pursued all the way down to the first half of 2020, in which Québec repeatedly dangled before Énergie Saguenay the carrot of public funding.

122. The Symbio Project team did not set out from the start to obtain public funding, and in absolute terms the Project was not dependent upon it.[224] [redacted]

The investment nevertheless sent a reassuring message of political support from the Québec Government, enhancing the appeal of the Symbio Project to private investors.[225]

123. In practice, Québec's consistent dangling of financing indeed did two things: it repeatedly motivated the Symbio Project team to pursue the Project, further to the Québec Government's apparent support; and it served as a selling-point to potential outside investors, who also took notice of the promise to invest as a sign the Project would ultimately be approved (or at least treated fairly).[226]

124. The corollary was however that investors perceived any change in position and any wavering from the Québec Government negatively. As such, repeated last-minute decisions by the Québec Government not to invest in the Symbio Project, in spite of high-level and specific assurances that it would invest, repeatedly generated unnecessary challenges for the Symbio Project team including outright pull-out of potential investors, to the overall detriment of the Project.[227]

125. After the first informal suggestions of funding in 2014, Québec Minister of the Economy Jacques Daoust first proposed that the Québec Government invest in the Symbio Project

---

222 Witness Statement of Tony Le Verger (21 November 2023), para. 112-113, **CWS-3**.

223 Witness Statement of Jim Illich (21 November 2023), Section XI.B., **CWS-1**.

224 Witness Statement of Tony Le Verger (21 November 2023), paras. 60-61, **CWS-3**.

225 Witness Statement of Tony Le Verger (21 November 2023), para. 61, **CWS-3**.

226 Witness Statement of Tony Le Verger (21 November 2023), para. 61, **CWS-3**.

227 Witness Statement of Tony Le Verger (21 November 2023), para. 59, **CWS-3**.

during February and March 2015.[228] This was in a broader context of discussions between the Symbio Project team and the Québec Government about how the latter might support the Project, – in addition to access to hydroelectricity and the offer of tax holidays.[229]

126. While Minister's Daoust's initial informal offer went no further in 2015, his successor as Minister of the Economy from January 2016, Dominique Anglade, turbocharged the Québec Government's plan to invest in the Symbio Project. [redacted]

[redacted]

128. In order to formalise its proposed investment, Québec required that Symbio support the Province's investment entity, IQ, in extensive due diligence concerning the Project. Symbio agreed and went on to spend the better part of a year fulfilling IQ's information requests.[232] [redacted]

[redacted]

228 Lettre de Michel Gagnon (GNLQ) au ministre de l'Économie, de l'Innovation et des Exportations Jacques Daoust – Participation du gouvernement du Québec à la réalisation du projet Énergie Saguenay (11 March 2015), **Exh. C-00187.**

229 Lettre de Jacques Daoust au Michel Gagnon (25 March 2015), **Exh. C-00188.**

[redacted]

232 Witness Statement of Tony Le Verger (21 November 2023), paras. 68-75, **CWS-3**.

[redacted]

[redacted] By the end of July 2017, fulfilling its own undertakings in support of Québec's participation, Énergie Saguenay had raised over USD 40 million in third-round private sector financing. Once informed – at Québec's suggestion – of the Government's proposed participation in the round, certain investors also made their own offers conditional on the Québec Government seeing through on its own promised contribution.[235]

130. [redacted]

131. Despite this, on 30 August 2017, the Symbio Project team was informed that the Québec Cabinet had reneged on IQ's proposal to invest. No explanation for the rejection was forthcoming.[239]

132. This last-minute reversal risked jeopardizing Énergie Saguenay's entire third round of financing.

[redacted]

[redacted]

235 Witness Statement of Vivek Bidwai (21 November 2023), paras. 162, **CWS-2**.

[redacted]

237 Witness Statement of Tony Le Verger (21 November 2023), para. 76, **CWS-3**.

238 Witness Statement of Tony Le Verger (21 November 2023), para. 76, **CWS-3**.

239 Witness Statement of Tony Le Verger (21 November 2023), para. 77, **CWS-3**.

[redacted]

135. Again, the Québec Cabinet's formal approval was required. Ultimately, on 15 September 2017, MESI Assistant Deputy Minister Mario Bouchard informed Énergie Saguenay that the revised letter had not even been submitted to the Québec Cabinet for approval. No explanation was provided.[241]

136. At this point, Québec's incoherent position had jeopardized Énergie Saguenay's third round of funding. Alarmed by the apparent change of tone of Québec senior political leadership, major private investors in the third round threatened to walk.[242]

137. Québec itself appeared alarmed by the harm it had caused and sought to repair the damage, inciting both the Symbio Project team as the Project proponent and Énergie Saguenay's private-sector investors to carry on. Québec notably assured Énergie Saguenay's senior management that difficulties with the financing proposal should not be read as detracting from its overall support for the Project. Moreover, Québec senior officials made themselves available to major Énergie Saguenay financers, again seeking to reassure them that the financing pull-out was only a temporary hiccup. Québec went on to formalise its position through the issuance of a revised integrated support letter on 27 September 2017.[243]

138. In light of these further assurances, Symbio proceeded with the financing round and closed it successfully in late October 2017 with over about US$ 41 million from both existing and new investors, [244] which could have been closer to USD 50 million had the Québec Government not reneged on its stated intention to invest in Symbio.

139. Nevertheless, the Québec Government's volte-face led to one Québec-related investor pulling out USD 6 million that been destined for the Project.[245] Overall, Symbio had significantly less than its expected USD 50 million and had to slow down a number of areas of spending that would otherwise have accelerated at that stage.[246]

P. GNLQ submitted an Environmental Impact Study for GNLQ in full compliance with Québec and Canadian laws

140. All of the scientific and technical due diligence that the Symbio Project team had been undertaking in the early years of the Project were ultimately aimed at achieving the

---

241 Witness Statement of Tony Le Verger (21 November 2023), para. 81, **CWS-3**.

242 Witness Statement of Tony Le Verger (21 November 2023), para. 82, **CWS-3.**

243 Witness Statement of Tony Le Verger (21 November 2023), para. 83, **CWS-3.**

244 Symbio Infrastructure LP - Fully Diluted Cap Table by Round, **Exh. C-0095**, 2018 EF (LNGP LP) Sheet; Witness Statement of Vivek Bidwai (21 November 2023), para. 160, **CWS-2.**

245 Witness Statement of Vivek Bidwai (21 November 2023), para. 164, **CWS-2.**

246 Nevertheless, Symio would still push forward with its plans to develop the GNLQ Project notwithstanding the damage inflicted by the Québec Government. In August 2018, Symbio would attract a further USD7,125,000 by way of expansion financing contributions from its third-round investors: Symbio Infrastructure LP - Fully Diluted Cap Table by Round, **Exh. C-0095**, 2018 EF (LNGP LP) Sheet.

environmental approval from the Government of Québec and from the Federal Government of Canada.

141. To that end, GNLQ provided a formal notice of the GNLQ element of the Project to the Québec Ministry of the Environment and the Fight Against Climate Change (**MELCC**) in November 2015 (as required by the *Environment Quality Act* (Q-2) (the **EQA**)).[247] This formal notice triggered an environmental review process that lasted almost six years.

142. In December 2015, GNLQ received detailed instructions from the MELCC on the parameters of the required environmental assessment for GNLQ in the form of a directive that the MELCC issued pursuant to the EQA (the **MELCC Directive**).[248]

143. As Me Duchaine notes in her Report, the issuance of the MELCC Directive was a crucial step in GNLQ's environmental assessment process.[249] The MELCC Directive set out the four corners within which the MELCC had to carry out its environmental analysis and make its recommendation to the Environment Minister and within which the Québec Government could exercise its discretion to either approve or reject the GNLQ Project.[250]

144. Me Duchaine notes in her Report that as a matter of Québec law, the Directive identified the issues that had to and could be evaluated to determine the environmental acceptability of the GNLQ Project. The opportunities for modifying the MELCC Directive were limited and specifically provided for in the EQA.[251] In any event, the MELCC did not modify its Directive at any point.[252]

145. Me Duchaine further finds in her report that as a matter of Québec law, the MELCC Directive circumscribed the exercise of the Québec Government's discretion to approve or reject the GNLQ Project, and that it precluded the MELCC from assessing the GNLQ Project against criteria that were not explicitly set out in the MELCC Directive.[253]

146. According to Me Duchaine, these inherent limitations on the exercise of discretionary power are ever so more necessary in light of: (i) the significant costs and delays that a project proponent incurs in carrying out an environmental impact assessment; and (ii) the breaches of the rules of natural justice and procedural fairness that necessarily arise from the refusal

---

247 GNL Québec inc., Avis de projet, Doc. No. PR1.1 (November 2015), **Exh. C-00197**, section 31.2.

248 *See* MELCC-DGEES, Directive pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay par GNL Québec inc., Dossier 3211-10-021, Doc. No. PR2.1 (December 2015), **Exh. C-00198**. The Directive was required pursuant to section 31.3 of the EQA.

249 Expert Report of Me Christine Duchaine, 20 November 2023, p. 80.

250 Expert Report of Me Christine Duchaine, 20 November 2023, p. 5.

251 Expert Report of Me Christine Duchaine, 20 November 2023, p. 80.

252 Expert Report of Me Christine Duchaine, 20 November 2023, p. 82.

253 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 5, 80-81.

of a project based on criteria which are either not identified in the initial directive or which are added in an untimely fashion.[254]

147. Me Duchaine finds in her Report that as a matter of Québec and Canadian law, it was unlawful for the Québec Government to subject the GNLQ Project as a whole to an environmental assessment under the EQA.[255] At the very least, Me Duchaine finds that it was unlawful to subject the following aspects of the GNLQ Project to an environmental assessment under the EQA, since they fell within the exclusive federal jurisdiction of the Government of Canada: public property; navigation; the protection of belugas; and international trade.[256] Me Duchaine further found that the Québec Government was fully aware of this fundamental issue of jurisdiction at the latest by August 2019 (date of issuance of a Québec Court of Appeal judgment on point), and that the Québec Government, the Environment Minister and the MELCC knowingly exceeded the boundaries of pronvicial environmental review powers by continuing to assert jurisdiction over these areas as part of the environmental assessment of the GNLQ Project.[257]

148. Moreover, Me Duchaine finds that given that at the very least some aspects of the GNLQ Project were within federal jurisdiction, the Québec Government should have cooperated with the federal Government of Canada with regard to the environmental assessment of the GNLQ Project pursuant to the Canada-Québec Agreement on Environmental Assessment Cooperation.[258]

149. In parallel, GNLQ provided formal notice of the GNLQ element of the Project to the Canadian Environmental Assessment Agency (**CEAA**) in November 2015, as required by the *Canadian Environmental Assessment Act 2012* (**CEAA 2012**).[259] In March 2016, it received detailed instructions from the CEAA on the parameters of the required environmental assessment, in the form of binding Guidelines for the Preparation of an Environmental Impact Statement (**EIS Guidelines**).[260]

150. Consistent with Me Duchaine's findings, Mr. Northey confirms that the Government of Canada should have collaborated with the Québec Government to hold single environmental assessment pursuant to the Canada-Québec Agreement on Environmental Assessment

254 Expert Report of Me Christine Duchaine, 20 November 2023, p. 80.

255 Expert Report of Me Christine Duchaine, 20 November 2023, p. 50.

256 Expert Report of Me Christine Duchaine, 20 November 2023, p. 50.

257 Expert Report of Me Christine Duchaine, 20 November 2023, p. 50.

258 Expert Report of Me Christine Duchaine, 20 November 2023, p. 67.

259 GNL Québec inc., Avis de projet, Doc. No. PR1.1 (November 2015), **Exh. C-00197**, section 8.

260 Guidelines for the Preparation of an Environmental Impact Statement for Saguenay Energy Project Liquefied Natural Gas Export Terminal (14 March 2016), Pursuant to section 19(2) of CEAA 2012, **Exh. C-00199**.

Cooperation.[261] Mr. Northey that this had occurred for the envnrionmental assessment of North Shore Terminal, which was also on federal land.[262]

151. Mr. Northey further concurred with Me Duchaine on the point that the EQA "does not apply to projects on federal Crown lands, including specific categories of lands owned by port authorities".[263] Indeed, this implies that the federal environmental assessment process of the GNLQ Project should have taken precedence over the provincial one.[264] Mr. Northey takes issue with the Government of Canada's "persistent failure … to ensure compliance with" the Canada-Québec Agreement on Environmental Assessment Cooperation, as this unfairly and irregularly allowed the Québec Government to unilaterally advance with its own environmental assessment process and to pre-judge the issues ahead of the federal environmental assessment.[265]

152. In February 2019, GNLQ submitted the complete and comprehensive Environmental Impact Statement of the GNLQ Project[266] to the MELCC (as envisaged in section 31.3.1 of the EQA) and to IAAC, the preparation of which had taken almost three years. The EIS itself ran over 1,100 pages (not including annexes), and covered in detail the following non-exhaustive list of topics:

a. Justification for the GNLQ Project;

b. Overview of the GNLQ Project, including its main features, management, costs and timeframe;

c. Consultation and participation of local communities and First Nations;

d. Assessment of the Project's environmental effects on the physical environment, including (but not limited to) air quality/GHGs and subaquatic noise within the defined local area of study;

e. Assessment of the Project's environmental effects on the biological environmental, including (but not limited to) marine mammals;

f. Assessment of the Project's environmental effects on First Nations, including (but not limited to) use of territory and resources, and cultural heritage;

---

261 Expert Report of Rodney Northey, paras. 68-72.

262 Expert Report of Rodney Northey, paras. 73-74.

263 Expert Report of Rodney Northey, para. 58.

264 Expert Report of Rodney Northey, para. 7.

265 Expert Report of Rodney Northey, paras. 50, 75-76.

266 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), Doc. No. PR 3.1, **Exh. C-0043**.

g. Assessment of the Project's environmental effects on local and regional communities;

h. Assessment of the Project's cumulative environmental effects; and

i. Énergie Saguenay's proposed surveillance and monitoring programs, including mitigation measures for its anticipated environmental effects.

153. Accompanying the main body text were five volumes of annexes[267] totalling almost 4,000 pages appending (among other materials) the many original studies underlying the EIS's assessment of the GNLQ Project's environmental effects, including:

a. Transfert Environnement et Société's Traditional Land and Resource Use Study;

b. WSP's various in-house sectorial reports, including Modelling Atmospheric Dispersion; Evaluation of GHG Emissions; Subaquatic Noise Climate; Marine Mammals; and

c. Mallette's Socio-Economic Study, which projected that the total investment for the GNLQ Project amount to (i) almost Can$ 7.849 billion during its 4 years of construction; and (ii) over Can$ 79.98 billion over its 25 years of operation.[268]

154. Consonant with GNLQ's commitment to creating and operating the least GHG-emitting LNG plant, the EIS also volunteered to incorporate a Life Cycle Analysis (**LCA**) report produced by the Centre international de Référence sur l'Analyse du Cycle de Vie et la transition durable (**CIRAIG**) in January 2019. In estimating emissions levels throughout the life-span of the Project, CIRAIG's LCA report reached a key conclusion that « l'opération du terminal de liquéfaction du Saguenay permet une réduction des émissions de GES, comparativement à celle d'un terminal … par près de 84% ». It also concluded, conservatively, that the Project would result in a reduction of around 28 million tons of GHG emissions per year over the life of the project. [269].

Q. The GNLQ Project team spared no effort in addressing the follow-up questions of the MELCC as part of a year-long constructive dialogue aimed at finding workable solutions and mitigation measures to address potential impacts of the Project

155. Once GNLQ had filed the GNLQ EIS, the provincial environmental review process for the GNLQ Project progressed to the stage of EIS review by the MELCC. GNLQ received a first

---

267 Transfert Environnement Et Société. 2018. Étude sur le savoir autochtone et l'utilisation des ressources et du territoire dans le cadre du projet Énergie Saguenay de GNL Québec (April 2018), **Exh. C-00161**; **Exh. C-00200; Exh. C-00201**; **Exh. C-00202**; **Exh. C-00203**.

268 Mallette, « Étude de Retombées Socio-Économiques – Rapport Final, GNL Québec – Projet Énergie » (26 October 2018), Annexed to WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-00202**, Volume 4, p. 24, Tableau 7.

269 Transfert Environnement Et Société. 2018. Étude sur le savoir autochtone et l'utilisation des ressources et du territoire dans le cadre du projet Énergie Saguenay de GNL Québec (April 2018), **Exh. C-00161,** pp.112 and 215 of PDF.

round of questions from MELCC in May 2019[270] and a second round of questions in November 2019.[271] Accordingly, the GNLQ Project team responded to two full rounds of extensive and detailed technical questions from the MELCC.

156. From start to finish, GNLQ engaged in the MELCC environmental review process in good faith on the basis of the criteria identified by the MELCC in its December 2015 Directive and of the guidance set out in the MELCC's subsequent rounds of questions.

157. In its responses, GNLQ made a series of undertakings and rigorous commitments to mitigate the environmental impact of GNLQ during the construction and operation phase to comply with various (and in cases unprecedented) requests of the MELCC throughout the environmental review process.

158. GNLQ's co-operative and constructive approach throughout this process reflected the fact that, pre-24 March 2021, the MELCC's questions were focussed on mitigation of potential impacts. This includes in particular the issue of GHG emissions as well as the potential impacts of the Project on the beluga whale population — two of the pretexts that would later be cited by the Québec Government to refuse to authorise the GNLQ Project.

1. Pre-24 March 2021, MELCC's questions concerning GHG emissions did not address the GNLQ Project's contribution to reducing worldwide GHG emissions or energy transition

159. The MELCC Directive referred to GHG emissions only as a sub-item within the eighth of ten broad categories of impacts of the GNLQ Project on the biophysical environment to be discussed in the GNLQ Environmental Impact Statement.[272] Despite this, around the time as it filed its EIS in February 2019, GNLQ announced that it would devote the necessary efforts

---

270 MELCC – Direction de l'évaluation environnementale des projets hydriques et industriels (**DEEPHI**) (**MELCC-DEEPHI**), Questions et commentaires – 1re série (22 May 2019), Doc. No. PR5.1, **Exh. C-00204** ; GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205.**

271 MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), Doc. No. PR5.3, **Exh. C-00206**; GNL Québec, Réponses aux questions et commentaires – Deuxième série, Doc. No. PR5.4 (January 2020), **Exh. C-00207**. There was also a separate exchange of question and answer on a targeted social cost-benefit study: see PR10.3 - MELCC. Courriel concernant un complément d'information demandé - Volet analyse avantages-coûts, (November 2020), **Exh. C-00208**; PR10.4 - MELCC. Complément d'information demandé - Volet analyse avantages-coûts, sans date, **Exh. C-00209**; and PR10.5 - GNL QUÉBEC INC. Réponse au complément d'information demandé - Volet analyse avantages-coûts (December 2020), **Exh. C-00210.**

272 *See* MELCC-DGEES, Directive pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay par GNL Québec inc., Dossier 3211-10-021, Doc. No. PR2.1 (December 2015), p. 19, **Exh. C-00198**.

> « afin d'opérer un complexe carboneutre … par la réduction des émissions et la compensation des [GES] générés par les opérations de l'usine de liquéfaction au moyen de mesures crédibles menant à une empreinte zéro carbone ».[273]

160. During the exchanges of questions and answers between the MELCC and GNLQ from May 2019 to February 2020, MELCC had sought clarifications and additional information as part of a cooperative dialogue with GNLQ. The MELCC had struck a conciliatory tone intent on finding solutions and helping GNLQ secure the approval of its Project.[274]

161. In its first series of questions from May 2019, the MELCC had merely included three clarification requests relating to GHG emissions: (i) whether a proposed employee shuttle s would be mandatory; (ii) whether GNLQ could explain why it had stated that the impact on GHG emissions was local instead of global; and (iii) that GNLQ provide Québec and Canada's annual GHG emissions figures for the past 20 years.[275]

162. In its replies of August 2019, GNLQ: (i) confirmed that it would employ a shuttle service for workers during construction; (ii) stated that the GHG emissions arising directly out of the GNLQ Project were local, that GHG emissions from its supply chain were regional, and that the impacts of GHG emissions on climate change were global; and (iii) provided the requested GHG emissions data, while informing the MELCC that GNLQ had undertaken to make the GNLQ liquefaction facility 100% carbon neutral.[276]

163. In order to ensure that the GNLQ liquefaction facility could operate as a carbon neutral installation, which was a self-imposed objective of GNLQ, GNLQ commissioned Université du Québec à Chicoutimi's (**UQAC**) Research Chair on "Eco-Conseil" in the spring of 2019 to evaluate the options for the Project to become net-zero.[277] UQAC produced its final report in September 2019[278] (which GNLQ shared with the Québec Government), and further affirmed that there was a realistic path for the Project to become carbon-neutral.[279]

---

273 Énergie Saguenay Comminucation, « Le projet de complexe de liquéfaction Énergie Saguenay s'engage à devenir carboneutre Entente avec la Chaire de recherche en éco-conseil de l'Université du Québec à Chicoutimi » (14 February 2019), **Exh. C-00211**.

274 *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 190, 192, **CWS-3**.

275 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC – 59, 60, 97 (pp. 16, 29).

276 GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2, (August 2019), **Exh. C-00205**, Answers R-59, R-60, R-97, pp. 59, 103-105.

277 GNLQ, Une usine carboneutre; un modèle pour l'industrie (20 June 2019), **Exh. C-00212**.

278 Chaire en éco-conseil Université du Québec à Chicoutimi, Identification de moyens crédibles pour un grand émetteur final canadien de s'affirmer carboneutre au Québec, Rapport final Préparé pour GNL Québec (4 September 2019), **Exh. C-00213**.

279 Witness Statement of Tony Le Verger (21 November 2023), para. 134, **CWS-3**.

164. In its second set of questions from November 2019, the MELCC merely invited GNLQ to develop GHG emission mitigation measures in addition to those it had already proposed, and to consider the global impact of GHG emissions as important.[280]

165. In its second set of answers from January 2020, GNLQ accordingly confirmed that it did view GHG emissions as a global and important issue, and that GNLQ to this end intended for its Project to be carbon neutral.[281]

166. In its third series of questions dated 3 March 2021, the MELCC asked GNLQ to commit to submitting independently-verified annual reports of GHG emissions generated during both construction and operation of the LNG facility, which should also include GHG emission mitigation, avoidance, reduction and compensation measures.[282] In their responses dated June 2021, GNLQ confirmed they could provide the requested data and undertook to do so.[283]

2. Pre-24 March 2021, the MELCC's questions concerning the potential impact on beluga whales were focussed on mitigation of potential impacts

167. By the same token, up to March 2021 the MELCC's questions concerning the relationship between shipping and marine mammals — notably belugas whales — were focussed on the mitigation of potential impacts.

168. To recall, the GNLQ Project's liquefaction facility and related port infrastructure had deliberately been sited at the Port of Saguenay, which was many kilometres outside of the zone in which belugas were typically sighted and outside of the protected beluga habitat zone. The proposed amount of shipping by GNLQ ("between 140 and 165 tankers per year") [284] was less than one ship every two days, over the course of a given year, from the GNLQ terminal up the Saguenay River and through the St Lawrence River. This was compared with the "tens of thousands" of ferry crossings that cross the mouth of the Saguenay every year,[285] and the "thousands of "commercial excursions" taking place year-round, including

280 MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), **Exh. C-00206**, Doc. No. PR5.3, QC2 – 15, QC2 – 16.

281 GNL Québec, Réponses aux questions et commentaires – Deuxième série, Doc. No. PR5.4 (January 2020), **Exh. C-00207,** R2 – 15, R2 – 16, pp. 30-31.

282 MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), **Exh. C-00214**, Doc. No. PR10.7, Question 38.

283 GNL Québec, Réponses aux questions et aux engagements, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, R 38 p. 44.

284 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.14

285 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.64.

those which deliberately target belugas through whale-watching activity.[286] As additional context, the Saguenay River had historically seen annual ship traffic that exceeded 500 ships during the late 1970s. By 2012, due to the decline in industrial activity in the Saguenay area, that number had dropped to below 200.[287]

169. Moreover, as noted above the Federal and Québec Governments began as of 2012 promoting the increased use of the Port of Saguenay for shipping on the St. Lawrence River. In the years leading up to the filing of GNLQ's EIS in 2019, the two Governments approved a large number of major projects which enhanced the Saguenay Port's shipping capabilities (such as the North Shore Terminal, approved by the Federal Government in 2018),[288] or otherwise increased maritime transportation on the Saguenay (such as BlackRock Metals, approved by the Québec Government in 2019).[289]

170. Both the MELCC and the MFFP signalled their openness throughout the environmental review process to prevention and mitigation measures to address potential beluga whale-related impacts of the Symbio Project. Throughout the multi-year review process, they clearly signalled that any potential risks to beluga whales could be managed and addressed through appropriate mitigation and preventative measures, similarly to other projects.

171. In its first series of questions from May 2019, the MELCC underlined its concerns about merchant ship navigation as one source among others of noise that could impact beluga habitats.[290] As of that time, according to MELCC, scientific knowledge did not allow it to reach any conclusions on the effects of these risk factors. The MELCC nevertheless confirmed that until scientific knowledge had progressed sufficiently on the matter, the MFFP would continue to support the identification of applicable preventive measures with relevant organisations and federal authorities. The MFFP also asked the Symbio Project team for its cooperation and for a general undertaking to implement measures that would mitigate the potential impact of its activities on marine mammals.[291]

172. In these same questions from May 2019, the MELCC asked the Symbio Project team whether ships *at dock* might risk bringing about an acoustic barrier that would cause

---

286 North Shore Terminal, Environmental Assessment Report, **Exh. C-00215**, p.200. See also Table 2 of Saguenay–St Lawrence Marine Park Management Plan 2010, **Exh. C-00216**.

287 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, p.740; DB24 Administration Portuaire Du Saguenay. La navigation sur le Saguenay au fil des années, carte présentée lors de la séance de 13 h le 23 septembre 2020, **Exh. C-00217**.

288 North Shore Terminal, Environmental Assessment Report, **Exh. C-00215**, p.24.

289 MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038 (27 February 2019), **Exh. C-00218**, p. 29.

290 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204,** Doc. No. PR5.1, QC-102, pp. 31-32.

291 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-102, p. 32.

difficulties for marine animals.[292] The MELCC's question exclusively focussed on "ships at dock" and said nothing about noise arising out of merchant ship navigation. If such a risk related to ships at dock did exist, the MELCC asked that Énergie Saguenay provide for mitigation measures regarding the noise from ships at dock that would be need to be validated once the Project had reached an operational stage. Again, the MELCC was signalling that it did not have any conclusive information about harm, and in any event that it remained focussed on mitigation measures.

173. In these same questions from May 2019, the MELCC asked four specific questions that sought undertakings or mitigation measures about subaquatic noise: two were exclusively focussed on *ships at dock* (and called for a sound simulation and mitigation measures);[293] the third was focussed on the construction phase of the Project;[294] and the fourth had to do with both the construction phase of the Project and ships at dock.[295] Nothing in these specific questions about subaquatic noise related to merchant ship *navigation*.

174. With regard to merchant ship navigation, the MELCC asked that Énergie Saguenay: (i) add escort tugs to its assessments of the number of passing ships;[296] (ii) provide the noise frequency spectrum for each type of ship that would be used;[297] and (iii) explain why the Symbio Project team had used an average of 17 minutes of exposure time for belugas to noise of passing ships, which was less than the DFO estimate.[298] The only mitigation measure that the MELCC asked Énergie Saguenay to commit to with regard to merchant ship navigation was to comply with a maximum speed of 10 knots, while explaining how the Symbio Project team could ensure compliance with such a speed limit if it did not own its ships.[299]

175. Thus, the MELCC not only indicated that there was no confirmed problematic impact of merchant ship navigation on belugas, but also made it clear that its approach was to focus on mitigation measures. The MELCC did not make the slightest suggestion of any outright ban on increased merchant ship navigation on the Saguenay River or St. Lawrence River. The MELCC's questions and requests showed that its focus was on construction and ships at dock, and not on ship navigation. This was consistent with the Québec Government's

---

292 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-105, p. 32.

293 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204,** Doc. No. PR5.1, QC-65, QC-66, p. 17.

294 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-67, pp. 17-18.

295 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-77, pp. 20-21.

296 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-103, p. 32.

297 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-103, p. 32.

298 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-104, p. 32.

299 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-101, p. 31.

active promotion of commercial shipping in the Saguenay and St Lawrence rivers, as well as its continued permission allowing at least tens of thousands of ships to use these waterways each year for ferry crossings, cruise ships, maritime shipping, whale watching tours, and other recreational uses.[300]

176. In its first series of answers from August 2019, GNLQ confirmed its awareness of the beluga population in the St. Lawrence River, took note of the Québec Government's concerns about protecting belugas, and indicated that it had taken the following steps in relation to belugas:

a. GNLQ undertook to become a member of Technopole Maritime du Québec (**TMQ**) (and did so on 29 April 2019[301]) and also joined its MeRLIN network, which had set up a working group that studied the acoustic impact of merchant ships;

b. GNLQ committed to providing financial support to the MARS Maritime Innovation Project aimed at establishing a hydrophonic station that could ascertain the acoustic signature of ships;

c. GNLQ committed to cooperating with the MFFP and share information as part of the MFFP research project with the Université du Québec en Outaouais (**UQO**);

d. GNLQ committed to cooperating with Transport Canada for the purposes of its ongoing research and studies on reducing noise from ships;

e. GNLQ committed to cooperating with maritime building sites and motorists in order to validate the most cutting-edge technologies available; and

f. GNLQ committed to establishing technical specifications on ship noise mitigation measures.[302]

177. With regard to subaquatic noise during the construction phase of GNLQ, in its first series of answers from August 2019 the Symbio Project team provided detailed explanations, measures and data about construction methods and processes and estimated subaquatic noise levels.[303]

178. With regard to the MELCC's subaquatic noise concerns arising from ships at dock, the Symbio Project team clarified that the LNG tankers it proposed to use had yet to be built, but that they would be built using the most modern means and technologies available, and

---

300 *See* Table 2 of Saguenay–St Lawrence Marine Park Management Plan 2010, **Exh. C-00216**

301 Technopole Maritime du Québec, Nous sommes heureux d'accueillir GNL Québec parmi nos membres (29 April 2019), **Exh. C-00219**.

302 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answer R-102, p. 109.

303 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205**, Answers R-77, R-105, pp. 85, 111. *See also* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-17, pp. 19-20.

that they would comply with the strictest operational international standards that existed.[304] The Symbio Project team provided detailed subaquatic noise data, simulations and modelling that covered ships docked at the North Shore Terminal, the projected GNLQ marine terminal and the Marcel-Dionne dock using data from conventional bulk carriers which are noisier than the LNG tankers that GNLQ intended to use.[305] Énergie Saguenay explained that even when using data from conventional bulk carriers, the simulations and modelling showed that the noise of ships at dock would quickly blend into the natural background subaquatic noise, within approximately ten meters of port installations.[306]

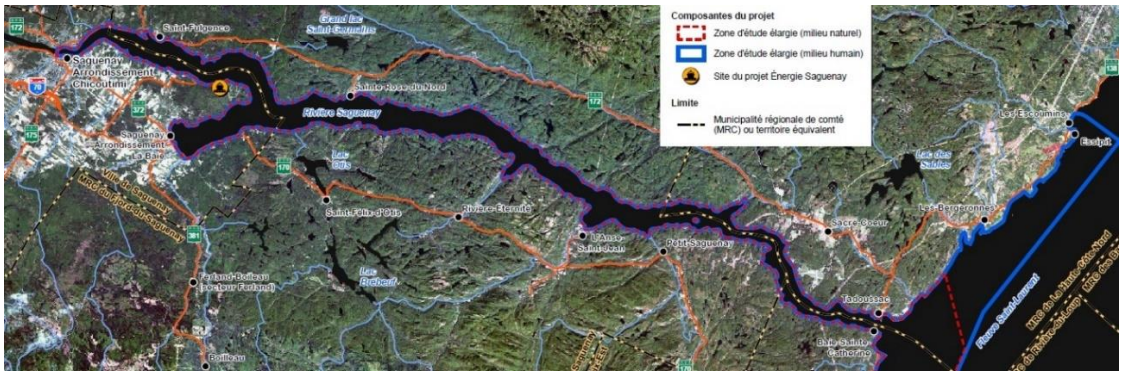
179. With regard to navigation, the Symbio Project team also committed to ensuring that the LNG tankers it would charter would maintain a maximum navigation speed of 10 knots during the whole journey between the Pilot boarding station in Les Escoumins and the GNLQ marine terminal loading dock. Pilots of the *Corporation des pilotes du Bas-Saint-Laurent* (**CPBSL**) take over the navigation of vessels on the Saguenay River for all journeys on the Saguenay River between Les Escoumins and Saguenay City:[307]

304 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answers R-65 (p. 64), R-77 (p. 85), R-101 (p. 108),R-105 (p. 111).

305 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answers R-65 (p. 64), R-77 (p. 85).

306 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answers R-65 (p. 64), R-77 (p. 85).

307 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answer R-101 (p. 108). Maps are from the following sources: CPBSL, Explorez le territoire de la CPBSL, available at **Exh. C-00220**; WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**.



180. On navigation, the Symbio Project team submitted comprehensive information based on sound modelling and navigation simulation exercises that it had carried out at the Maritime Simulation and Resource Centre (a division of the CPBSL) after it had filed the GNLQ EIS, in particular: (i) that LNG tankers as conceived would not require escort tugs due to their superior manoeuverability; as well as (ii) noise frequency spectrum estimates for the LNG tankers as conceived when navigating at a speed of between 10 and 14 knots.[308]

181. The Symbio Project team further explained that GNLQ was deploying simulation, modelling and mitigation efforts on developing navigation speed scenarios to reduce subaquatic noise arising out of its LNG tankers while they were navigating through critical habitat areas of the belugas.[309] GNLQ had proactively undertaken these considerable efforts in the absence of any prompting from MELCC. The Symbio Project team also explained their use of a different average beluga exposure time to noise of passing ships than that of the DFO since the DFO's estimate was published after the submission of GNLQ's initial report on this matter, while highlighting DFO's assessment that GNLQ's exposure times were generally coherent with those of the DFO.[310]

182. In its second set of questions from November 2019, the MELCC deemed as satisfactory the Symbio Project team's explanations, measures and data on subaquatic noise sampling and mapping to do with the construction of the GNLQ Project.[311] The MELCC only asked Énergie Saguenay to adjust its proposed surveillance methods for monitoring the impacts of subaquatic noise on fish during the construction phase of the GNLQ Project,[312] and to

---

308 GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answer R-103 (p. 110).

309 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answers R-65 (p. 64).

310 *See* GNL Québec, Réponses aux questions et commentaires (Vol. 1), Doc. No. PR5.2 (August 2019), **Exh. C-00205,** Answers R-104 (p. 111).

311 *See* MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), **Exh. C-00206**, Doc. No. PR5.3**,** QC2 – 22 (responding to Answer R-77), p. 8.

312 *See* MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), **Exh. C-00206**, Doc. No. PR5.3, QC2 – 18 (responding to Answer R-67), p. 6.

modify its working methods should the indicated subaquatic noise threshold during construction be exceeded.[313]

183. On subaquatic noise to do with the operation of the GNLQ Project, the MELCC's second set of questions from November 2019 again focussed on ships at dock.[314] The MELCC noted that Énergie Saguenay was not in a position to provide precise subaquatic noise assessments with regard to ship activities at port facilities (given that the LNG tankers it intended to charter had not yet been built). The MELCC asked Énergie Saguenay whether it was considering providing electrical supply for LNG tankers while they were docked at its marine terminal, which might contribute to reducing both subaquatic noise and GHG emissions from LNG tankers.[315] The MELCC made no mention of subaquatic noise arising out of merchant ship *navigation* in its second set of questions from November 2019.

184. In its second set of answers from January 2020, the Symbio Project team again addressed the MELCC's questions related to subaquatic noise and the construction of the GNLQ Project and ships at dock. With regard to construction of the GNLQ Project, Énergie Saguenay agreed to: (i) adjust its proposed surveillance methods for monitoring the impacts of subaquatic noise on fish in line with the MELCC's observations and suggestions;[316] and (ii) modify its working methods should the indicated subaquatic noise threshold during construction be exceeded.[317]

185. With regard to ships at dock, Énergie Saguenay replied that installing a high voltage charging station was not possible at LNG marine terminals since they represent a fire hazard.[318] GNLQ intended to put in place a procedure to reduce the electrical demand of docked LNG tankers ("Hotelling Load") by turning off all non-essential systems. GNLQ was also considering the use of dual-energy auxiliary generators (diesel/natural gas) onboard the LNG tankers it would charter. GNLQ further clarified that the bulk of its subaquatic noise reduction efforts would go into the design of the LNG tankers, which included inserting the

313 *See* MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), **Exh. C-00206**, Doc. No. PR5.3, QC2 – 22 (responding to Answer R-77), p. 8.

314 *See* MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), **Exh. C-00206**, Doc. No. PR5.3, QC2 – 17 (responding to Answer R-65), p. 6.

315 *See* MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), **Exh. C-00206**, Doc. No. PR5.3, QC2 – 17 (responding to Answer R-65), p. 6.

316 GNL Québec, Réponses aux questions et commentaires – Deuxième série, Doc. No. PR5.4 (January 2020), **Exh. C-00207,** R2-18 (answering QC2-18), p. 32.

317 GNL Québec, Réponses aux questions et commentaires – Deuxième série, Doc. No. PR5.4 (January 2020), **Exh. C-00207,** R2-22 (answering QC2-22), p. 42.

318 GNL Québec, Réponses aux questions et commentaires – Deuxième série, Doc. No. PR5.4 (January 2020), **Exh. C-00207,** R2-17 (answering QC2-17), p. 31.

bi-energy (diesel/natural gas) generators in acoustic casings on board the LNG tankers in order to reduce the vibrations that they would produce.[319]

186. Therefore, up to March 2021 the MELCC and the Symbio Project team engaged in a cooperative, back-and-forth process of fine-tuning GNLQ's activities that might generate subaquatic noise. Nothing in these exchanges could have signalled the draconian, arbitrary and discriminatory criteria that the MELCC would ultimately apply to the Project regarding subaquatic noise.

R. MELCC certified the completeness of GNLQ's Environmental Impact Statement in February 2020 following a year-long process of detailed questions from the MELCC and comprehensive answers from GNLQ

187. On 3 February 2020, the MELCC notified the Symbio Project team that its GNLQ EIS was admissible and complete, as specifically stated that GNLQ had satisfactorily dealt with the subjects that GNLQ was required to address under the MELCC Directive.[320]

188. As Me Duchaine noted in her Report, the MELCC was under a statutory obligation to find that the EIS was admissible and complete, but only if it considered that the EIS dealt in a satisfactory manner with all issues set out in the MELCC Directive.[321] Pursuant to section 31.3.4 of the EQA, if the Minister considered at that point that GNLQ's EIS did not meet the requirements that the MELCC had set out in its Directive, the MELCC should have either terminated the environmental review process or required additional information or commitments. The MELCC did the opposite; it validated GNLQ's EIS, stating: "[c]onsidérant que l'étude d'impact déposée répond de façon satisfaisante à la directive ministérielle".[322] Therefore, the GNLQ Project achieved a significant milestone when it received the admissibility notice.

189. As Me Duchaine noted in her Report, GNLQ had a legitimate expectation under Québec and Canadian law that the Québec Government would approve the GNLQ Project, and that the Minister of the Environment would comply with the parameters set out in the MELCC Directive by virtue of: (i) the very issuance of the MELCC Directive; (ii) the extensive support and encouragement that GNLQ had received for its Project from the Québec Government; (iii) the considerable sums of money that GNLQ had invested in the Project, the EIS and the environmental assessment process; and (iv) the fact that the MELCC had

---

319 GNL Québec, Réponses aux questions et commentaires – Deuxième série, Doc. No. PR5.4 (January 2020), **Exh. C-00207,** R2-17 (answering QC2-17), p. 31.

320 MELCC, Avis sur la recevabilité de l'étude d'impact, Doc. No. PR7 (February 2020), **Exh. C-00221**.

321 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 76, 80.

322 MELCC, Avis sur la recevabilité de l'étude d'impact, Doc. No. PR7 (February 2020), **Exh. C-00221**.

found that GNLQ's EIS was admissible and complete and satisfactorily dealt with the matters that GNLQ was required to address under the MELCC Directive.[323]

190. The MELCC recommended that the environmental review process could proceed to public consultations in accordance with the procedure laid down in the EQA.[324] The MELCC thus recommended to the Minister of the Environment that the GNLQ Project be referred to the BAPE for the start of the public hearing process.[325]

191. On 20 February 2020, Québec Environment Minister Benoit Charette instructed the BAPE to hold public consultations on the GNLQ Project pursuant to Section 31.3.5 of the EQA and to produce a report on its analysis and findings regarding the GNLQ Project.[326]

192. Pursuant to Section 6.3 of the EQA, the function of the BAPE is to "inquire into any question relating to the quality of the environment submitted to it by the Minister and to make to him a report of its findings and of its analysis thereof". However, as Me Duchaine underlines in her Report, BAPE reports do not bind the Environment Minister or the Québec Cabinet; they are for information and consideration only.[327]

193. These public consultations were to begin in March 2020, but were delayed by the COVID-19 pandemic, and by the Québec Government's arbitrary decision to bypass GNLQ in favour of other projects. Ultimately, BAPE's mandate on the GNLQ Project officially began on 14 September 2020.[328]

194. The exchanges between the Symbio Project team and the MELCC in the GNLQ environmental review process between 2018 and 2020 were paralleled by intensive discussions between Énergie Saguenay and the newly-elected Government of Québec, which expressed anew its support for the Symbio Project and expressed its revived interest to invest in the Project.

S. A second wave of negotiations with IQ resulted in a new investment offer from the Québec Government

195. Around the same time as the submission of GNLQ's EIS, the new Québec Government led by François Legault's Coalition Avenir Québec (**CAQ**) party, which won the Québec

---

323 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 76, 80.

324 MELCC, Avis sur la recevabilité de l'étude d'impact, Doc. No. PR7 (February 2020), **Exh. C-00221**.

325 MELCC, Avis sur la recevabilité de l'étude d'impact, Doc. No. PR7 (February 2020), **Exh. C-00221**.

326 PR8.3 - MELCC - Lettre mandatant le BAPE de tenir une audience publique (20 February 2020), **Exh. C-00222.**

327 Expert Report of Me Christine Duchaine, 20 November 2023, p. 10.

328 PR8.3 - MELCC - Lettre mandatant le BAPE de tenir une audience publique (20 February 2020), **Exh. C-00222**; PR8.3.1 - MELCC - Lettre retirant le mandat du BAPE de tenir une audience publique (13 March 2020), **Exh. C-00223**; PR8.3.2 - MELCC - Lettre mandatant le BAPE de tenir une audience publique (22 May 2020), **Exh. C-00224**.

provincial elections in October 2018, rekindled Québec's original proposal to directly fund the Symbio Project.[329]

196. Overtures in this regard began on 24 January 2019, when a meeting took place at the World Economic Forum in Davos, Switzerland, between Premier Legault and Jim Illich. Jim Breyer, Québec's Minister of the Economy Pierre Fitzgibbon, and Investissement Québec Pierre Gabriel Côté also participated in this meeting. In the conversation, Jim Illich noted that the GNLQ Project was attracting significant funding and was headed for success, but noted the relative lack of Québec-sourced investment in the Project. In response, Premier Legault spontaneously volunteered, "*you need a Quebec investor, and that will be us!*".[330] Premier Legault expressed strong support for the GNLQ and Gazoduq Projects as well as his interest in investing in Symbio.[331] In a contemporaneous tweet, the Premier referred to GNLQ as "[u]n projet prometteur" and confirmed his support towards the Project.

Figure 7 - Tweet from Premier Legault (25 January 2019)

329 Witness Statement of Jim Illich (21 November 2023), paras. 185 *et seq.*, **CWS-1**.

330 Witness Statement of Jim Illich (21 November 2023), para. 186, **CWS-1**.

331 Witness Statement of Jim Illich (21 November 2023), paras. 185 *et seq.*, **CWS-1**.

197. The Legault Government went on to relaunch formal exchanges between IQ and GNLQ on the Québec Government's financial participation in the Symbio Project.

198. [redacted] Talks with IQ resumed. Despite having thoroughly investigated and approved investment in the Project as recently as August 2017, IQ insisted on carrying out its due diligence from scratch. To this end, IQ and its legal and accounting advisors conducted extensive legal and financial due diligence, over a seven-month period.[333] It bears mention that, at no point in the course of this due diligence, did the Government or IQ suggest that the environmental review process would be an issue; on the contrary, it was taken for granted.

199. [redacted]

T. [redacted] was ready to invest in the fourth financing round

200. In the midst of the second wave of negotiations with IQ, the summer of 2019, [redacted], expressed interest in investing in the Symbio Project. This was an important moment in the Project's financing rounds: indeed, they were told that [redacted] had been willing to assume pre-FID development risk for a multi-billion-dollar energy project, proposing [redacted] of phased investment.[337]

---

332 [redacted]

333 Witness Statement of Tony Le Verger (21 November 2023), paras. 91-92, **CWS-3**.

334 [redacted]

335 [redacted]

336 [redacted]

337 Status Update, "LNG Quebec Limited Partnership (LP) – Energie Saguenay & Gazoduq Development Update" (17 July 2020), **Exh. C-00229**, p. 2.

201. Following initial meetings in August 2019, the Symbio Project team and [redacted] engaged in an intensive due diligence process lasting over four months of several exchanges.[338] [redacted] left no stone unturned in assessing whether the Symbio Project presented a worthy investment opportunity. [redacted][339]

202. By November 2019, [redacted] was convinced of the Project' merits and formally expressed its investment interest.[340] [redacted] submitted its term sheet in November 2019.[341] On 31 January 2020, Jim Illich met with [redacted] senior executives in [redacted] for a "handshake to close" the deal. By 11 February 2020, the parties reached agreement on the term sheet, the equity investment agreement and subscription agreement.[342]

203. [redacted] undertook to initially fund [redacted] in mid-February 2020 in the fourth round of financing.[343] [redacted]

204. [redacted] commitment to invest was conditional upon simultaneous investment from the Québec Government. Again, the amount Québec needed to invest to fulfil this requirement was proportionately quite low, certainly compared with [redacted] commitment. At issue instead was some material sign of Québec's support for the Project. GNLQ therefore worked closely with [redacted] and IQ to finalize the approval process and confirm Québec's funding for the fourth round of financing.[345]

205. In past exchanges with the Symbio Project team, Québec Government officials had confirmed they would proceed with recommending a [redacted] investment at their

---

338 Witness Statement of Jim Illich (21 November 2023), para. 192, **CWS-1.**

339 Status Update, "LNG Québec Limited Partnership (LP) – Energie Saguenay & Gazoduq Development Update" (17 July 2020), **Exh. C-0229**, p. 2 ("Nov 2019 – After [redacted] speaks individually with both Premiers Kenney & Legault to confirm their support of the project, [redacted] submits its first Term Sheet.")

340 Status Update, "LNG Quebec Limited Partnership (LP) – Energie Saguenay & Gazoduq Development Update" (17 July 2020), **Exh. C-00229**, p. 2.

341 *Id.*, p. 2.

342 *See* Email from [redacted] to Vivek Bidwai, [redacted], **Exh. C-00231** with attachments: [redacted], **Exh. C-00232**; [redacted], **Exh. C-00233**.

343 Symbio Infrastructure LP - Fully Diluted Cap Table by Round, **Exh. C-0095**.

344 [redacted], Equity Investment Term Sheet (5 February 2020), **Exh. C-00234**.

345 Witness Statement of Jim Illich (21 November 2023), paras. 197-199, **CWS-1**.

Cabinet Meeting scheduled on 26 February 2020.[346] On 16 January 2020, Jim Illich and Pat Fiore met with Premier Legault, who again confirmed his support and interest in the Project and even posted a picture on Twitter singing the praises of GNLQ.[347]

206. In February 2020, Jim Illich also had a phone call with Minister Fitzgibbon, who confirmed that Québec indeed planned to fund [redacted]. In that same phone call, Minister Fitzgibbon advised that Cabinet approval would come on 12 February, and that funding would be released in the following week.[348]

207. Based on these developments, the Symbio Project team expected to execute [redacted] equity and subscription agreement on 19 February 2020, obtain government approval on 26 February 2020 and make the announcement the next day.[349] A few days later, Premier Legault's Chief of Staff Martin Koskinen confirmed to Jim Illich that the Québec Government would proceed to a Cabinet decision on 26 February 2020, and would announce

346 "Subject: LNG Quebec Limited Partnership – Fourth Round Update" (2 February 2020), **Exh. C-00235**.

347 Radio-Canada, "François Legault rencontre GNL Québec et vante le projet Énergie Saguenay" (16 January 2020), **Exh. C-0026** (« Dans son message, François Legault a vanté le projet d'usine de liquéfaction de gaz naturel qui, selon lui, créerait 4000 emplois durant la construction et 250 emplois permanents à 100 000 $ par année. Il a affirmé que le projet réduirait les gaz à effet de serre de 28 millions de tonnes en remplaçant des centrales au charbon. »).

348 "Subject: LNG Quebec Limited Partnership – Fourth Round Update" (2 February 2020), **Exh. C-00235**, p. 1.

349 *Id.*

the decision to the public on the same day or the day after.[350] Soon thereafter, Koskinen informed him that the Québec Government wanted to meet with [redacted] prior to the Cabinet meeting. [redacted] agreed to meet with the Québec Government in Montreal on 17 February 2020. By that point, all documentation was on track for signature in accordance with our discussions with [redacted].[351]

208. [redacted]

209. In mid-February 2020, a series of civil disobedience protests taking the form of severe railway blockades spread across Canada, in response to the construction of the Coastal GasLink Pipeline (**CGL**) through 190 kilometres of British Columbia claimed by traditional Wet'suwet'en First Nation leaders as their traditional territory .[354] As blockades continued, the Federal Government for weeks on end failed to enforce a court injunction against the protesters,[355] effectively paralysing the entire railway system in the region.[356]

210. The Federal Government's inaction proved fatal to [redacted] proposed investment. Despite having been on the verge of announcing their multi-billion investment, [redacted] senior executives contacted the Symbio Project team in mid-February 2020 to advise that despite their strong and interest, [redacted][357] [redacted] In a message dated 23 February 2020, Énergie Saguenay confirmed to its limited partners that [redacted] had decided not to invest in the fourth round of financing [redacted]

350 Witness Statement of Jim Illich (21 November 2023), para. 200, **CWS-1.** *See also* LNG Québec Limited Partnership – Fourth Round Update (16 February 2020), **Exh. JI-0089**, p. 1.

351 *Id.*

352 [redacted]

353 [redacted]

354 CBC News, "B.C. Supreme Court grants injunction against Wet'suwet'en protesters in pipeline standoff" (31 December 2019), **Exh. C-00237**.

355 CBC News, "What you need to know about the Coastal GasLink pipeline conflict" (12 February 2020), **Exh. C-00238**.

356 BBC News, "The Wet'suwet'en conflict disrupting Canada's rail system" (20 February 2020), **Exh. C-00239**.

357 LNG Quebec Limited Partnership (LP) – Energie Saguenay & Gazoduq Development Update (17 July 2020), **Exh. C-00229**, p. 2.

358 *Id.*

[redacted] was at that point on the verge of signature of the investment term sheet and subscription agreement after months of due diligence on the Symbio Project. Its ultimate decision not to invest in the Project was directly attributable to Canada's inaction in the face of the CGL crisis and had nothing to do with the Project's intrinsic merits.

211. [redacted] pull-out in turn threw a massive curve to the Symbio Project team. Their activities had been in full ramp-up stage in anticipation of significant new funding allowing the Project to proceed to FID. Prudent management demanded instead an immediate pause to allow the Project to regroup. On 28 February 2020, the team took the step of suspending most activities with vendors, contractors and suppliers, focussing on the preparation of targeted activities intended to move the Project past hurdles and better position it for securing alternative funding.[360] The COVID-19 pandemic and the global financial uncertainty quickly followed, accelerating the ramp-down: in response, the Symbio Project team decreased employee salaries by 15-20%, moved some employees to part-time status, and reduced its total workforce by about 25%.[361]

U. Following [redacted] decision not to invest, the Québec Government behaved in a duplicitous and disingenuous manner towards GNLQ

212. While [redacted] pull-out was challenging for the Symbio Project team, the Québec Government's disingenuous conduct in the wake of this unwelcome news made things much worse.

213. In the immediate aftermath of [redacted] decision, the Québec Government reiterated that it was "supportive" of the Project and "remain[ed] committed to investing [redacted]", although suddenly adding that "they [we]re not certain whether they w[ould] be able to maintain their planned schedule of seeking Cabinet approval for the investment on February 26th."[362] Québec asserted that it remained committed to investing [redacted], but now suddenly claimed that it required another major investor such as the Federal or Alberta Government to invest at least US$15M side-by-side.[363] This new requirement was despite the fact that GNLQ was already supported by a series of existing and credible investors who had invested over US$100 million, and who were willing to provide the necessary funds if

359 LNG Quebec Limited Partnership – Fourth Round Update (23 February 2020), **Exh. C-00240**.

360 *See* Confidential Memorandum, "LNG Quebec Limited Partnership – Énergie Saguenay & Gazoduq Development Update" (28 March 2020), **Exh. C-00241**, p. 1 and Email from Louis Bergeron to Jim Illich and Marie-Christine Demers, "Employment Impacts" (3 March 2020) **Exh. C-00242**.

361 Confidential Memorandum, "LNG Quebec Limited Partnership – Énergie Saguenay & Gazoduq Development Update" (28 March 2020), **Exh. C-00241**.

362 LNG Quebec Limited Partnership – Fourth Round Update (23 February 2020), **Exh. C-00240**.

363 LNG Quebec Limited Partnership – Fourth Round Update (24 February 2020), **Exh. C-00243**.

the Québec Government fulfilled its promise to invest [redacted], as originally agreed.[364]

214. Moreover, despite Québec's continued overt expressions of support, it soon became clear that behind the scenes Québec was already undermining the Project.

215. [redacted]

216. [redacted]

364 *See* Witness Statement of Jim Illich (21 November 2023), para. 201, **CWS-1.**

365 La Presse, "Nous soutenir", **Exh. C-00244** (« Au total, La Presse joint mensuellement 4 millions de lecteurs, soit autour de 60 % de la population adulte du Québec, avec des contenus percutants qui alimentent les débats. En 2022, plusieurs de nos reportages et enquêtes exclusives ont eu des impacts concrets dans notre société. »).

366 [redacted]

367 [redacted]

368 [redacted]

369 *See* Witness Statement of Jim Illich (21 November 2023), paras. 213 *et seq.*, **CWS-1**.

370 *E.g.*, "Subject: LNG Quebec Limited Partnership – Fourth Round Update" (2 February 2020), **Exh. C-00235**, p. 1.

371 Entente de Confidentialité entre Investissement Québec, Société en Commandite GNL Québec, GNL Québec Inc., et Gazoduq (12-14 February 2019), **Exh. JI-0090**, clauses 1, 2 and 10 and 13.

[redacted]

217. [redacted] Clearly, the absence of any reference to Québec Government promised funding for the Projects was deliberate – Québec did not want the public or opposition parties to know that it was planning to invest in the Symbio Project. The CEO of IQ did the same, despite twice having completed extensive due diligence and twice having green-lighted Québec to invest in the Projects, at the Québec Government's behest.[374] A senior economic advisor to the Office of Premier Legault would later tell Tony Le Verger that the true reason for the Project's rejection on alleged environmental grounds was that the Government "did not want to take the heat for a project that was not sure to get its financing in the long run".[375]

218. Ultimately, reneging once again on his prior promise, Québec Premier Legault on 8 December 2020 made a deliberate public announcement to the effect that Québec would not be investing in the Project, citing factors Québec had known all along and that had never before been an impediment to their investment.[376] Clearly, Premier Legault thought that by making such a public statement, deliberately targeting GNLQ for negative attention, he might gain a bit more domestic political support, at the Symbio Project's expense.

219. The media leak of March 2020, combined with these subsequent undermining and false statements made in the press, deliberately caused serious damage to the Symbio Project and undermined its credibility both with investors and with the public.[377]

220. Shortly after these events and the Québec Government's decision to throw another spanner in the works of GNLQ, the Project moved to the next phase of the GLNQ environmental review process before the BAPE Commission of Inquiry. The negative path on which Québec's deliberate leak had set the Project only worsened as GNLQ entered into the phase of public hearings.

---

372 [redacted]

373 *See* Witness Statement of Jim Illich (21 November 2023), paras. 215-217, **CWS-1**.

374 La Presse, "L'ADN vert de Guy LeBlanc" (17 June 2021), **Exh. C-00247**. (« Le PDG d'Investissement Québec n'a aucune intention d'injecter de l'argent dans le projet de gaz naturel liquéfié du Saguenay . . . Ni comme prêteur ni comme investisseur »).

375 *See* Witness Statement of Tony Le Verger (21 November 2023), para. 258, **CWS-3**.

376 Radio Canada, « Legault ferme la porte à du financement public pour GNL Québec » (8 December 2020), **Exh. C-00248.**

377 *See, e.g.*, Email from Tony Le Verger to Jim Illich and Vivek Bidwai (17 June 2021), **Exh. C-00249**.

V. The BAPE Commission of Inquiry on GNLQ conducted biased hearings, which led to a biased report

221. As required by Québec legislation, the Symbio Project took part in extensive public consultations in respect of the planned liquefaction facility and port terminal making up GNLQ, including a lengthy public consultation hearing before the BAPE Commission of Inquiry. This led to the issuance by the BAPE of a report of its findings and analysis, which effectively paved the way for the subsequent rejection of the Project.[378]

222. The BAPE's mandate on GNLQ officially began on 14 September 2020.[379] Two rounds of public hearings quickly followed and were held from 21 to 25 September 2020 and from 26 October to 4 November 2020.[380]

223. The role of the BAPE Commission is to inquire into environmental matters that the Environment Minister submits to it and to report back to the Minister on its findings. The BAPE reports do not bind the MELCC Minister or the Québec Cabinet as they are only for information and consideration purposes and allow the public to express its concerns about a Project. As its website highlights, the BAPE "n'a pas le pouvoir d'autoriser ou de refuser un projet. Il appartient au ministre responsable de l'Environnement de formuler ses recommandations au gouvernement, qui prend la décision finale."[381]

224. In GNLQ's case, however, the BAPE process was weaponised as an instrument to conduct biased hearings, which led to a biased report against the GNLQ Project. In fact, the BAPE process and its hearings were marred by substantial failures of due process and resulted in a seriously compromised final report (the **BAPE Report**).

225. During the public hearings, the BAPE notably agreed to hear from Clément Chion, a UQO researcher, as well as Robert Michaud, President of the Groupe de recherche et d'éducation sur les mammifères marins (**GREMM**) and a well-known vocal opponent of the GNLQ Project (as well as other industrial projects in the Saguenay region). The BAPE Committee misstated their credentials as government experts, allowed them to testify for hours at the hearing in a procedurally unfair manner, and ignored the extensive evidence of bias on their part. Regardless, the BAPE Report went on to extensively refer to and rely upon their biased evidence in its own conclusions.

---

378 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**.

379 PR8.3 - MELCC - Lettre mandatant le BAPE de tenir une audience publique (20 February 2020), **Exh. C-00222**; PR8.3.1 - MELCC - Lettre retirant le mandat du BAPE de tenir une audience publique (13 March 2020), **Exh. C-00223**; PR8.3.2 - MELCC - Lettre mandatant le BAPE de tenir une audience publique (22 May 2020), **Exh. C-00224**.

380 CM4.2 - BAPE - Communiqué de presse annonçant le début de la première partie de l'audience publique (1 September 2020), **Exh. C-00251**; CM4.3 - BAPE - Communiqué de presse annonçant les séances thématiques et le fonctionnement du register (11 September 2020), **Exh. C-00252**; AV8 - BAPE - Avis public sur le projet (12 September 2020), **Exh. C-00253**, pp. 4; 476-477.

381 *See* Québec, « Mission du BAPE », **Exh. C-00254**.

226. In the first place, the BAPE misstated these individuals' qualifications, in a manner that granted their submissions undue weight. The BAPE Report referred to Chion and Michaud as "experts from the Québec Ministère des Forêts, de la Faune et des Parcs (**MFFP**)":

> Clément Chion est chercheur à l'Université du Québec en Outaouais. Il gère le programme de recherche 2018-2023 financé par le MFFP portant sur la modélisation du trafic maritime et des déplacements des baleines dans l'estuaire du Saint-Laurent et le Saguenay. Il a agi en tant qu'expert du MFFP.[382]

227. Robert Michaud est le président du Groupe de recherche et d'éducation sur les mammifères marins (GREMM). À titre de collaborateur au programme de recherche 2018-2023 de l'Université du Québec en Outaouais, financé par le MFFP et portant sur la modélisation du trafic maritime et des déplacements des baleines dans l'estuaire du Saint-Laurent et le Saguenay, il a agi en tant qu'expert du MFFP.[383]

228. In reality, Chion managed an independent research program on maritime traffic and whale movements in the Saguenay and St. Lawrence Rivers; and Michaud worked with Chion on that same program. Neither was a MFFP representative or employee, nor were they 'independent' experts appointed by the BAPE.

229. These two intervenors came before the BAPE with a specific agenda, rather than as dispassionate scientists – a fact that the BAPE both ignored and concealed. On 2 September 2020, the day after the BAPE consultations were opened to the public, Chion, along with Michaud and a UQO colleague Jérôme Dupras, publicly advocated for a moratorium blocking any project that would increase maritime traffic on the Saguenay River.[384] Chion's UQO colleague exchanged emails with other UQO colleagues during the days preceding their press release, crowing that they were about to "sortir une bombe" on the GNLQ Project.[385]

230. Despite this, the BAPE went on to allow Chion and Dupras to grandstand for several hours during the BAPE hearing.[386]

231. These irregularities had a decisive impact on the BAPE's Final Report. In its Report, the BAPE Commission repeatedly and extensively referred to non-peer reviewed preliminary

---

382 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 181 and fn 68.

383 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 171 and fn 63.

384 *See for example* UQO Press Release, Protection des bélugas : des chercheurs de l'UQO recommandent un moratoire sur les projets de développement sur le Saguenay (2 September 2020), **Exh. C-00255**. See also Radio-Canada, « Appel à un moratoire pour protéger les bélugas dans la rivière Saguenay » (2 September 2020), **Exh. C-00256**.

385 Email exchanges between Jérôme Dupras and UQO colleagues (25-26 August 2020), **Exh. C-00257**.

386 *See* BAPE hearings transcripts DT 3, **Exh. C-00258**; 4, **Exh. C-00259**; 8, **Exh. C-00260**; 12, **Exh. C-00261**.

studies, evidence and opinions provided by Chion and Michaud,[387] failing to mention that he had a clear bias and strong opposition to the GNLQ Project. Furthermore, Dupras (a close colleague of Chion) reiterated the call for a moratorium in a written submission presented to the BAPE.[388] The BAPE took clear note of this recommendation, as it quoted this in its Report.[389] Michaud's organisation GREMM for its part presented its own submission to the BAPE Commission of Inquiry, which similarly recommended postponing any consideration of the GNLQ Project.[390]

232. While the biased evidence of Chion and Michaud received a lot of airtime, GNLQ had in fact committed to a charter of environmental commitments for the protection of marine mammals (the **Charter**) during the BAPE hearings in September 2020.[391] With its Charter, GNLQ sought to support scientific research and facilitate the implementation of concrete actions to reduce subaquatic noise from users of the Saguenay Fjord and the St. Lawrence River.

233. GNLQ developed the Charter in line with the four strategic pillars that the Government of Canada itself had set out in its 2020 Action Plan to reduce noise impacts on belugas (adoption of best practices; advancement of scientific knowledge and technological innovations; awareness-raising; consultation with stakeholders in the field):[392]

- *First pillar*: GNLQ adopted best practices by optimising propellers and hull ship design and ensuring acoustic insulation in the ships it would charter;
- *Second pillar*: GNLQ pursued the advancement of scientific knowledge and technological innovations by establishing the Sound Gain Program ("Programme de gain sonore"), a noise reduction program to be managed by an independent organisation that GNLQ would fund by investing C$ 5 million over a five-year period that would go to encouraging the deployment of concrete technical solutions to

387 For Clément Chion *see for example* BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, pp. 169, 181, 189, 193, 196, 198-201. For Robert Michaud *see for example* BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, pp. 171-172.

388 Jérôme Dupras et al., Regards sur les fondements économiques et écologiques du projet Énergie Saguenay de GNL Québec Présenté par Chaire de recherche du Canada en économie écologique, UQO, Doc. No. DM1994 (October 2020), **Exh. C-00262**, p. 13.

389 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 67.

390 GREMM, Mémoire sur les impacts possibles du projet sur les bélugas, Doc. No. DM2155 (October 2020)**, Exh. C-00263**, p. 13.

391 GNLQ, Charte d'engagements environnementaux pour la protection des mammifères marins, Document DA7.3 submitted to the BAPE on 24 September 2020, **Exh. C-00264**.

392 Fisheries and Oceans Canada, Action plan to reduce the impact of noise on the beluga whale (Delphinapterus leucas) and other marine mammals at risk in the St. Lawrence estuary, 2020, **Exh. C-00265**.

reduce subaquatic noise in the Saguenay Fjord and in the St. Lawrence River.[393] Specific examples of support measures included financially supporting a shipping company that wished to acquire less noisy and more efficient engines for its ships; facilitating the installation of bubble wall systems to absorb underwater noise; and supporting maintenance work and upgrades to ships to make them less noisy;[394]

- *Third pillar*: GNLQ raised awareness by funding awareness projects for Saguenay Fjord users;

- *Fourth pillar*: GNLQ consulted with stakeholders in the field by providing data (*e.g.*, noise monitoring, observation reports) to expert organisations and scientists.

234. Although the biased evidence submitted by Chion and Michaud affected the BAPE Commission's assessment of subaquatic noise, it nevertheless took note of GNLQ's Charter.[395]

235. The BAPE Report was finally released to the public on 24 March 2021.[396] It summarized a series of ambiguous and unsubstantiated allegations against the GNLQ Project based on statements made by members of the public during the public hearings:

a. It repeated a range of speculative allegations concerning the alleged impacts the GNLQ Project might have on global GHG emissions. None of these allegations was based on evidence, nor did they reflect the scope of considerations the MELCC itself had raised in its own, science-based consideration of the Project. [397]

b. It similarly relayed misleading conclusions regarding the alleged impact of the GNLQ Project on beluga whales, again based on no evidence. In fact, the BAPE ignored its own previous findings that additional ship movement linked to GNLQ's operations would amount to a negligible change in subaquatic noise, and referred instead to a vague and arbitrary threshold of not imposing any additional "stress" on belugas. [398]

---

393 GNLQ, Charte d'engagements environnementaux pour la protection des mammifères marins, Document DA7.3 submitted to the BAPE on 24 September 2020, **Exh. C-00264,** p. 2.

394 GNLQ, Charte d'engagements environnementaux pour la protection des mammifères marins, Document DA7.3 submitted to the BAPE on 24 September 2020, **Exh. C-00264,** p. 4.

395 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, pp. 167, 194-199.

396 AV8 - BAPE - Avis public sur le projet (12 September 2020), **Exh. C-00253.**

397 AV8 - BAPE - Avis public sur le projet (12 September 2020), **Exh. C-00253**, pp.313-314, 320.

398 AV8 - BAPE - Avis public sur le projet (12 September 2020), **Exh. C-00253**, pp.xi, 190-192.

236. The BAPE's *raison d'être* is to provide a forum through which the public can voice its concerns over large projects that are referred to the BAPE either by law or by the Minister of the Environment.

237. Despite this, the BAPE itself acknowledged that the Project enjoyed strong local and regional support, while its opponents tended to be out of the region and disregarded local interests. The BAPE notably quoted from the *Direction de santé publique du Centre intégré universitaire de santé et de services sociaux* (**CIUSSS**) of Saguenay–Lac-Saint-Jean, which produced answers in response to questions that the BAPE submitted to it as part of the public consultation process:

> Sans avoir directement mesuré cet élément, il semble y avoir une nette division dans la population au sujet de ce projet et le discours n'est que très peu nuancé à son égard ... L'incompréhension mutuelle entre les groupes pourrait en partie s'expliquer par une discordance dans la portée ou l'échelle des enjeux soulevés. Les sympathisants au projet Énergie Saguenay traitent généralement d'enjeux plus locaux ou régionaux tels l'emploi, la diversification de l'économie ou l'exode des jeunes, alors que les opposants sont préoccupés par des enjeux plus globaux tels la protection de la biodiversité, les changements climatiques ou l'équité intergénérationnelle.[399]

238. This excerpt clearly indicates the dividing lines between supporters in favour of the GNLQ Project and opponents to it. These opponents were not interested in debating the environmental merits of the GNLQ Project and simply took a "fundamentalist" approach based on a broad-brush opposition to any project involving any fossil fuel, regardless of its specific characteristics and environmental merits or the consequences of refusing it.

239. Even though the BAPE Commission of Inquiry witnessed what it termed to be an unprecedented mobilization during its public consultation process, with nearly 2,600 written and oral submissions from both individuals and groups,[400] the strong mobilization that took place at the local level shone through and remained at the very least on par with the broader opposition coming from other Québec regions.

240. In its Report, the BAPE Commission of Inquiry noted explicitly that while social acceptability can be expressed at different local, regional and national scales, particularly in the case of large projects or projects involving new sectors or technologies, priority should be granted to stakeholders whose lifestyle and quality of life are directly affected by a project when determining its social acceptability:

> La commission d'enquête note que, l'acceptabilité sociale peut s'exprimer à différentes échelles locale, régionale et nationale, notamment dans le cas de

---

399 Direction de santé publique du Centre intégré universitaire de santé et de services sociaux (CIUSSS) du Saguenay–Lac-Saint-Jean, Réponses aux questions du thème 1 – Effets psychosociaux et écoanxiété du document DQ18, Doc. No. DQ18.2 (4 December 2020), **Exh. C-00266**, p.2, cited at BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 277.

400 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 277.

> grands projets ou de projet interpellant de nouvelles filières ou technologies, même si une certaine priorité dans la détermination de l'acceptabilité sociale demeure généralement conférée aux parties prenantes dont le mode et la qualité de vie sont directement touchés par le projet.[401]

241. In its Report, the BAPE Commission of Inquiry further quoted a Québec Government publication from 2020 which stated that social acceptability is very often put forward at the local or regional level and will have more influence on whether or not a project is carried out when it is expressed at these levels:

> L'acceptabilité sociale est très souvent mise de l'avant à l'échelle locale ou régionale et aura davantage d'influence sur la réalisation ou non d'un projet lorsqu'il s'exprime à ces échelles.[402]

242. Regardless, in spite of the strong local and regional support in favour of the GNLQ Project, and in spite of the Québec Government's own views that local and regional levels of social acceptability must be given priority, the BAPE Commission of Inquiry merely concluded on social acceptability that there were many proponents both for and against the GNLQ Project, but that it could not reach any conclusions about the overall social acceptability of the GNLQ Project.[403]

243. The BAPE Report ultimately failed to reach any overall conclusion either in favour of or against the GNLQ Project.[404]

W. The Québec Government moved the goalposts on environmental approval at the last minute

1. Québec Environment Minister Benoit Charette rewrote the rules governing the environmental review and approval of the Project after the release of the BAPE Report

244. In March 2021, the GNLQ environmental review process took another abrupt turn. On 24 March 2021, the same day as the issuance of the BAPE Report, Québec Environment Minister Benoit Charette held a press conference in which he suddenly announced that the Québec Cabinet would *only* approve the GNLQ Project if it met three "core criteria", namely: (i) that the Project made a "positive net contribution" to reducing *global* GHG

401 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 281.

402 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 282.

403 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 284.

404 AV8 - BAPE - Avis public sur le projet (12 September 2020), **Exh. C-00253**, pp. 319-320.

emissions; (ii) that the Project "promoted energy transition"; and (iii) that the Project achieved "social acceptability".[405]

245. As Me Duchaine notes in her Report, the MELCC had not previously set out, in the December 2015 MELCC Directive, the first two "core criteria" as part of the environmental review process for the GNLQ Project, which had begun six years earlier.[406]

246. As Me Duchaine notes in her Report, the new "core criteria" of reducing worldwide GHG emissions and promoting energy transition have never been applied to the environmental assessment of any other project in Québec either before or after the environmental assessment of the GNLQ Project.[407]

247. As Me Duchaine further notes in her Report: (i) the MELCC Directive[408] referred to GHG emissions only once and in a summary fashion, and this sole reference cannot be construed as including worldwide GHG emissions; and (ii) the MELCC Directive[409] makes no mention of energy transition.[410] Me Duchaine explains that the MELCC was well aware of both the issues back in December 2015, and had deliberately chosen not to include them in its Directive.[411]

248. With regard to social acceptability, Me Duchaine notes in her Report that: (i) the MELCC Directive[412] included social acceptability only implicitly; (ii) that the MELCC Directive referred to social acceptability more as a process to go through than as a criterion to satisfy; and that (iii) the MELCC had not previously asked a question to GNLQ regarding social acceptability as part of the exchanges of questions answers pursuant to the environmental

---

405 Assemblée Nationale du Québec, « Point de presse de M. Benoit Charette, ministre de l'Environnement et de la Lutte contre les changements climatiques » (24 March 2021), **Exh. C-0031**. Minister Charette said: "[i]n fact, we have posed three very clear conditions that are maintained to this day, social acceptability, promoting energy transition and, ultimately, contributing to the global reduction of GHG emissions." (French original : « En fait, on a posé trois conditions très claires qui sont maintenues encore à ce jour, acceptabilité sociale, favoriser la transition énergétique et, ultimement, contribuer aux diminutions mondiales des gaz à effet de serre. »)

406 Expert Report of Me Christine Duchaine, 20 November 2023, p. 24.

407 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 90, 92.

408 *See* MELCC-DGEES, Directive pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay par GNL Québec inc., Dossier 3211-10-021, Doc. No. PR2.1 (December 2015), p. 19, **Exh. C-00198**.

409 *See* MELCC-DGEES, Directive pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay par GNL Québec inc., Dossier 3211-10-021, Doc. No. PR2.1 (December 2015), p. 19, **Exh. C-00198**.

410 Expert Report of Me Christine Duchaine, 20 November 2023, p. 24.

411 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 5, 24, 76, 129.

412 *See* MELCC-DGEES, Directive pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay par GNL Québec inc., Dossier 3211-10-021, Doc. No. PR2.1 (December 2015), pp. 3, 18, **Exh. C-00198**.

assessment process.[413] Therefore, the MELCC had not clearly set out these three criteria in its December 2015 Directive.

249. In her Report, Me Duchaine explains that the Environment Minister's sudden announcement of new core criteria was highly unusual and was not in conformity with the environmental assessment rules applicable to the GNLQ Project under the EQA and the MELCC Directive.[414]

2. Post-March 2021 MELCC suddenly expressed concerns over GHG emissions that were unrecognisable, draconian and arbitrary

250. Suddenly put to the task of compliance with the last-minute, amorphous criteria announced at the press conference of 24 March 2021, GNLQ sought clarifications from Environment Minister Charette and his staff. On 22 April 2021, Symbio Project team members took part in a meeting with the Minister of the Environment Benoit Charette and his advisors.[415] This meeting took place at Minister Charette's request after GNLQ's previous requests for clarifications about these new criteria had gone unanswered. [416] During this meeting, GNLQ officials once again sought clarity regarding the expectations of the MELCC or its evaluation methods in order to implement these new criteria. This was doubly important since these criteria had never been applied to any other project that could otherwise have served as a benchmark or whose review might have provided some guidance.

251. Neither the Minister nor any of his advisors were able or willing to provide GNLQ with any guidance. As summarised in contemporaneous notes of the meeting:

> We told him that our main focus now is to get the decree and [as] such GNL Qc is wondering what are the expectations regarding the Qc government's 3 conditions and how can GNL address the government's concerns and fulfill its conditions. The minister gives GNL Qc a carte blanche as the cabinet does not have the knowledge to impose the framework. He basically said that forcing us to follow a path would put the Government in an uncomfortable situation, so he does not want to tell us what to do. [...] We asked how they would assess the documentation we may file, as there is no specific guidance from the MELCC on this. He said he did not really know and looked at his Chief of Staff (Hugo [Delaney]).[417]

---

413 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 122.

414 Expert Report of Me Christine Duchaine, 20 November 2023, p. 82.

415 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198.

416 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198.

417 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198.

252. It was apparent that MELCC officials did not know how to assess the GNLQ Project in light of these criteria, and that they were not inclined in the slightest to provide any guidance or information on how to conform with these criteria. As Me Duchaine notes in her Report, the apparent refusal or inability of the Minister of the Environment and his senior staff to provide any guidance was unfair and not in line with due process requirements.[418]

253. On 26 April 2021, a few days after this meeting and one month after Minister Charette's press conference on the BAPE Report, the MELCC issued a final series of follow-up questions to Symbio Project team on the GNLQ review process.[419] At this advanced stage of an environmental review process, the MELCC typically puts forward only final, technical questions arising out of well-considered issues mentioned in the MELCC Directive and linked to prior exchanges between MELCC specialists and the project proponent. Instead, in this case the MELCC tacked on the end of its technical questions a few brief and vaguely-worded queries relating to the newly-announced "core criteria". The MELCC disingenuously asked Symbio Project team whether they had "anything to add" to any and all documents that together amounted to its "government authorisation file" regarding either: (i) the scenario whereby the Project would allow for a reduction of global GHG emissions; or (ii) its impact on energy transition.

254. The MELCC's formulation attempted to camouflage the obvious novelty of these criteria. The MELCC in doing so disregarded its own December 2015 Directive and tried to legitimise Minister Charette's ultimatum-style criteria at the eleventh hour. Under the guise of "addenda" to the prior March 2021 set of questions, the MELCC sought to shoehorn the Minister's newly-revealed "core criteria" into its legally-mandated environmental review process.

255. Nevertheless, there was no hiding what Me Duchaine described as a highly unusual announcement of new core criteria not in conformity with the environmental assessment rules applicable to the GNLQ Project under the EQA and the MELCC Directive.[420] Nor was it possible to deny the fact, as Me Duchaine notes in her Report, that the new "core criteria" of reducing worldwide GHG emissions and promoting energy transition have never been applied to the environmental assessment of any other project in Québec either before or after the environmental assessment of the GNLQ Project.[421]

256. The tone and substance of MELCC's last questions stood in contrast with the professional manner in which MELCC had conducted the environmental review process up to that point. Minister Charette's inflexible tone during his March 2021 press conference, and his framing of worldwide GHG emissions at the main focal point of the environmental review process, contrasted sharply with the reference in the MELCC Directive to GHG emissions only as a

---

418 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 27, 83, **CER-1**.

419 *See* MELCC-DEEPHI, Addenda à la demande d'engagements et d'informations complémentaires – Annexe (26 April 2021), Doc. No. PR10.9, **Exh. C-00268**, Question 52.

420 Expert Report of Me Christine Duchaine, 21 November 2023, p. 82, **CER-1**.

421 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 90, 92, **CER-1**.

sub-item within the eighth of ten broad categories of impacts of the GNLQ Project on the biophysical environment to be discussed by GNLQ in its Environmental Impact Statement.[422]

257. During the exchanges of questions and answers between the MELCC and GNLQ from May 2019 to February 2020, MELCC had sought clarifications and additional information as part of a cooperative dialogue with GNLQ. The MELCC had struck a conciliatory tone intent on finding solutions and helping GNLQ secure the approval of its Project.[423]

258. Notwithstanding the lack of sufficient notice or reasonable guidance from either the Minister or the MELCC following their about-face of March-April 2021, GNLQ managed to submit to the MELCC in June 2021 a significant evidence-backed expert study that was aimed at responding (to the best of its understanding) to the questions raised, by: (i) providing detailed and comprehensive replies to the MELCC's late-stated questions; (ii) demonstrating the Project's contribution to reducing global GHG emissions; (iii) substantiating the Project's contribution to the worldwide transition to cleaner energy; and (iv) addressing the MELCC's implied preoccupation with energy "lock-in".[424] The Symbio Project team's response was accompanied by a 91-page Annex report,[425] itself accompanied by two comprehensive studies demonstrating the important contribution of LNG to energy transition and substitution.[426]

259. The MELCC process involved the release of its final environmental analysis report,[427] which was in turn supported by a series of specialist reports generated by a range of in-house government experts. Among these for the GNLQ Project were specialists in evaluating GHG emissions.

260. Based upon the reports submitted by GNLQ in June 2021, the MELCC's own specialist on GHG emissions and climate change impacts concluded that GNLQ had adequately

---

422 *See* MELCC-DGEES, Directive pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay par GNL Québec inc., Dossier 3211-10-021, Doc. No. PR2.1 (December 2015), p. 19, **Exh. C-00198.**

423 *See* Witness Statement of Tony Le Verger (21 November 2023), paras.190, 192, **CWS-3**.

424 GNL Québec, Réponses aux questions et aux engagements, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, R 52, pp. 60-65.

425 GNL Québec, Réponses aux questions et aux engagements, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Annexe R 52 – RAPPORT – Rôle du GN et du GNL dans la transition énergétique dans le contexte de l'Accord de Paris : Contribution de GNL Québec.

426 GNL Québec, Réponses aux questions et aux engagements, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Annexe R 52 – RAPPORT – Rôle du GN et du GNL dans la transition énergétique dans le contexte de l'Accord de Paris : Contribution de GNL Québec, ANNEXE 1 – Étude Wood Mackenzie scénario AET-2 (GNLQ Energy Transition Scenario Analysis); and ANNEXE 2 – Étude Poten & Partners sur les scénarios de substitution (Market Report on the LNG Final Destination and Usage Prepared for GNL Ouebec, March 2020), **Exh. C-0068**.

427 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**.

responded to the newly-stated and late-announced GHG criteria. The MELCC's specialist on climate change went so far as to specifically conclude that:

> « En somme, nous considérons que le projet n'est pas incompatible avec les objectifs de réduction de [gaz à effet de serre] du Québec ni avec les exigences de réduction de [gaz à effet de serre] établies dans l'Accord de Paris. »[428]

261. In its final Environmental Analysis Report, the MELCC-DGEES did not dispute such unambiguous, science-backed conclusions from the MELCC's own climate experts.[429] The MELCC simply chose to disregard their conclusions, along with the significant amount of evidence that the Symbio Project team had produced. Acknowledging while going on to ignore the written opinion of its own experts at the MELCC's Department of Climate Expertise, the MELCC-DGEES flatly stated that "plusieurs incertitudes demeurent quant à l'apport concret que pourrait avoir le projet s'il était réalisé sachant que les clients ne sont pas identifiés et que par conséquent, les ententes finales ne sont pas signées."[430]

262. The MELCC-DGEES's overall conclusion, that it was not in a position to conclude that the GNLQ Project was environmentally acceptable, rested in part on these alleged "uncertainties" which had nothing to do with assessing the GNLQ Project's otherwise highly probable and undisputed contribution to reducing GHG emissions.[431] The MELCC had thus reached its pre-ordained outcome of rebuffing GNLQ and its Project.

3. Post-March 2021 MELCC supposed zero-tolerance concerns over belugas were drastic and intransigent

263. The drastic and draconian approach taken by the MELCC following the 24 March 2021 press conference held by Minister Charette was also mirrored in the MELCC's supposed concerns over the beluga whales that followed afterwards.

264. As explained in above, pre-March 2021 the MELCC's concern over the beluga whales were reasonable and driven towards the implementation of measures that would mitigate the impact of subaquatic noise on marine wildlife, *vis-à-vis* Énergie Saguenay's own engagements, commitments and the technical specifications of its vessels. These cooperative exchanges also took place in the broader context where the Canadian and the Québec Governments specifically and consistently encouraged increased shipping from the Port of Saguenay as a highway for economic development of the region.

---

428 *See* Avis des experts – Recueil des avis issus de la consultation auprès des ministères et organismes, Complexe de liquéfaction de gaz naturel à Saguenay - Projet Énergie Saguenay, Dossier 3211-10-021, 8-17 juin 2021 (Doc. No. PR9.3), p. 48 (MELCC's Department of Climate Expertise), **Exh. C-0032** (Translation to English from French original: "[i]n sum, we consider that the project is not incompatible with Québec's GHG emission reduction objectives or with the GHG emission reduction requirements set out in the Paris Agreement").

429 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, p. 52.

430 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, p. 52.

431 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, pp. v, 43, 45-47, 52, 54.

265. Against this backdrop, post March 2021 the MELCC suddenly signalled an unexpected and abrupt shift to a zero-tolerance approach to *any* increase in marine traffic and subaquatic noise in the Saguenay or St Lawrence rivers. In its third series of questions dated [3] March 2021, the MELCC merely acknowledged in passing[432] that GNLQ had committed to a charter of environmental commitments for the protection of marine mammals during the BAPE hearings in September 2020.[433] However, echoing the political level's increasingly undermining approach, the MELCC suddenly and for the first time inquired as to whether GNLQ could operate its Project in a way that avoided generating *any* additional subaquatic noise in the Saguenay fjord between April and October each year.[434]

266. The MELCC's entirely new and sudden zero-noise threshold with regard to subaquatic noise from LNG tankers flatly ignored all constructive discussions on the topic that had taken place between GNLQ and the MELCC over the prior two and a half years. It also ignored the broader context in which over a hundred ferry ships were crossing the mouth of the Saguenay River on average every day,[435] and thousands of excursions were made by whale watching boats targeting beluga whales up and down the Saguenay and St Lawrence Rivers every year.[436]

267. The MELCC's radical change in approach is clear from the sudden importance that the MELCC assigned to noise from merchant ship navigation. In its first series of questions from May 2019, the MELCC had mentioned merchant ship navigation as one source among others of noise that could impact beluga habitats.[437] The MELCC had clearly stated that until scientific knowledge had progressed sufficiently on assessing the impact of such noise on marine mammals, the MELCC would continue to ask for mitigation measures.[438] None of the MELCC's questions from May 2019 or November 2019 asked GNLQ to implement mitigation measures on noise from merchant ship navigation other than to commit to a maximum speed of 10 knots (which Énergie Saguenay had agreed to undertake).

---

432 MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), **Exh. C-00214**, Doc. No. PR10.7, Preamble to questions 24, 25 and 26, (no page numbers – within the subsection titled "Mesures proposées par l'initiateur").

433 GNLQ, Charte d'engagements environnementaux pour la protection des mammifères marins, Document DA7.3 submitted to the BAPE on 24 September 2020, **Exh. C-00264**.

434 *See* MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), **Exh. C-00214**, Doc. No. PR10.7, question 25.

435 WSP, Projet Énergie Saguenay – Étude d'impact environnemental – version finale (January 2019), **Exh. C-0043**, Annex 3, pp.21-22.

436 North Shore Terminal, Environmental Assessment Report, **Exh. C-00215**, p.200. See also Table 2 of Saguenay–St Lawrence Marine Park Management Plan 2010, **Exh. C-00216**.

437 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-102, pp. 31-32.

438 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), **Exh. C-00204**, Doc. No. PR5.1, QC-102, p. 32.

268. Suddenly, in March 2021, the MELCC declared that: "[n]oise linked to human activities, mainly navigation, is one of the priority threats that must be addressed to counter the decline of the St. Lawrence beluga".[439] This was despite the MELCC's acknowledgment that ongoing scientific research had yet to produce any tangible understanding of noise impacts from merchant ship navigation on belugas, stating that: "[t]he work carried out by UQO and its partners, as well as other ongoing work under the responsibility of the federal government, will make it possible to clarify these risks as well as identify effective mitigation measures within a few years".[440]

269. On 26 April 2021, the MELCC issued a "follow-up" question to the Symbio Project team, as part of its last-minute series of questions presented under the guise of being mere "addenda" to the prior March 2021 set of questions. MELCC suddenly demanded that Énergie Saguenay submit a comprehensive overview of all subaquatic noise reduction measures whose *efficacy had already been demonstrated* and which Énergie Saguenay could apply to the Project.[441] The MELCC already knew full well, based on prior exchanges with the Symbio Project team, that many of Énergie Saguenay's proposed mitigation measures relied on new LNG tankers that were being specifically designed to maximize noise reduction, and accordingly, that Énergie Saguenay would be incapable of fulfilling this newly-devised criterion.[442] Although the combined effect of all of GNLQ's proposed measures had not yet been demonstrated, each of the individual measures had tried and tested noise reduction effects on ships. The MELCC also knew that commercial ships in the St Lawrence and Saguenay historically had not been required to provide evidence of noise-reduction efforts let alone demonstrate their efficacy. Everything pointed to the fact that the MELCC was simply inventing a new, non-scientific requirement it knew GNLQ would be unable to fulfil.

270. In its June 2021 responses to the MELCC, the Symbio Project team protested that the MELCC's newly-espoused prohibition on generating *any* additional subaquatic noise in the Saguenay fjord between April and October each year would prevent LNG tankers from navigating through the Saguenay fjord during seven months out of any given year. This would make the Symbio Project financially unsustainable, in addition to generating multiple highly complex technical problems for the LNG liquefaction facility linked to suspending operations for seven out of twelve months each year.[443] In essence, Énergie Saguenay confirmed, MELCC's new and wholly arbitrary zero-noise threshold would make it *de facto*

---

439 *See* MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), **Exh. C-00214**, Doc. No. PR10.7**,** preamble to questions 24, 25 and 26.

440 *See* MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), **Exh. C-00214**, Doc. No. PR10.7, preamble to questions 24, 25 and 26 (no page numbers).

441 *See* MELCC-DEEPHI, Addenda à la demande d'engagements et d'informations complémentaires – Annexe (26 April 2021), Doc. No. PR10.9, **Exh. C-00268**, Question 48.

442 *See* MELCC-DEEPHI, Questions et commentaires – 2e série (5 November 2019), **Exh. C-00206,** Doc. No. PR5.3, QC2 – 17 (responding to Answers R-65 and R-66), p. 6.

443 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answers R-25 and R-26, p. 27.

impossible for the Project to secure the MELCC's approval and amounted to a moratorium that singled out and exclusively targeted Énergie Saguenay.

271. Despite MELCC's alarming volte-face, the Symbio Project team maintained a positive and cooperative approach in its June 2021 responses to the MELCC consistent with its longstanding work on noise reduction and elimination. The Symbio Project team helpfully proposed still further noise mitigation measures that LNG tankers would follow during operations.[444] Énergie Saguenay notably confirmed that LNG tankers would obtain an international certification as "silent ships".[445] The main classification societies (ABV, BV, DNV-GL, Lloyds, RINA) have all developed a class of "silent" ship.[446] In order to obtain a certification as belonging to this class of "silent" ship, a ship must demonstrate, during sea trials, a noise emission level lower than the class criteria. Ships must be designed and their construction must be supervised in order to achieve this. GNLQ undertook that it would require the LNG tankers that it intended to charter qualify for international certification as "silent ships".[447]

272. Énergie Saguenay also undertook to regularly require the LNG tankers it would charter to modernise by implementing new noise reduction technological developments as part of its tanker maintenance program, and to developing a monitoring program with MFFP to evaluate the efficacy of measures aimed at mitigating marine traffic on belugas.[448]

273. Énergie Saguenay further listed 11 noise reduction measures (and an estimation of their anticipated noise reduction) based on a study prepared by Vard Marine Inc. (**Vard**) commissioned by Transport Canada[449] and whose implementation Énergie Saguenay was actively contemplating:[450]

---

444 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-25, p. 27.

445 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, pp. 56-57, Answer R53, p. 67, Table R-53, p. 72.

446 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, p. 57.

447 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, p. 57.

448 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, p. 58.

449 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, pp. 56-58; Andrew Kendrick and Rienk Terweij (Vard Marine Inc.), Vard Marine Report, Ship Underwater Radiated Noise, report 368-000-01, rev 3 (9 January 2019), **Exh. C-00270**; IMO, Marine Environment Protection Committee, Ship Underwater Radiated Noise Technical Report and Matrix Submitted by Canada - key excerpts from the Vard Marine Inc. report submitted by Canada (13 May 2019), **Exh. C-00271** ; Andrew Kendrick and Rienk Terweij (Vard Marine Inc.), Vard Marine Report, Ship Underwater Radiated Noise, report 368-000-01, rev 4, (12 February 2019), **Exh. C-00272**.

450 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, pp. 56-57. The three levels of estimated noise reduction arising out of the proposed mitigation measures are as follows:

Tableau R-48 Mesures d'atténuation du bruit subaquatique

Mesure d'atténuation	Niveau de certitude	Réduction anticipée (selon Vard)
Double coque	Confirmé (intrinsèque)	ND
Double hélice en contre-rotation	Confirmé (intrinsèque)	Faible à moyenne
Optimisation de l'hydrodynamisme	Confirmé	Faible
Programme de nettoyage et d'entretien des hélices	Confirmé	Faible
Programme de nettoyage et e ntretien régulier de la coque	Confirmé	Faible
Peinture antisalissure	Confirmé	Faible
Lubrification de la coque par injection d'air	Confirmé	Élevée
Insonorisation de la coque par l'ajout de matériel absorbant	Confirmé	Élevée
Montage de résilient des équipements et moteurs auxiliaires	Confirmé	Élevée
Motorisation 4-temps montée de façon résiliente	À l'étude (confirmé, mais dépendant du choix de la motorisation finale)	Élevée
Motorisation 2-temps couplée à une composante électrique	À l'étude (confirmé, mais dépendant du choix de la motorisation finale)	Élevée

274. Énergie Saguenay recalled its commitment that the LNG tankers it was to charter would maintain a maximum navigation speed of 10 knots during the whole journey between the CPBSL Pilot boarding station in Les Escoumins and the GNLQ marine terminal loading dock, as CPBSL Pilots take over the navigation of vessels on the Saguenay River for all journeys on the Saguenay River between Les Escoumins and Saguenay City.[451]

275. The design and specifications of the ships that Énergie Saguenay planned on using, combined with GNLG's maximum navigation speed commitment, meant that the Symbio Project team was confident that the LNG tankers it was to charter could achieve a noise reduction of around 50% to 75% as a result of applying its 11 actively pursued noise mitigation measures to the LNG tankers.[452] This realistic noise reduction target was well above the one that the various stakeholders at the International Maritime Organization (**IMO**) in 2018-2019 considered to be easily achievable.[453]

276. Énergie Saguenay also specified that the sound modelling and navigation simulation exercises that it had carried out at the Maritime Simulation and Resource Centre (a division

"— faible [low]: < 5 dB;

— moyenne [average]: 5-10 dB;

— élevée [high]: > 10 dB".

451 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, p. 57, Answer R-53, p. 67.

452 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, p. 57.

453 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, p. 57.

of the CPBSL) had made it possible to implement navigation procedures to reduce noise.[454] These procedures included the use of the tide to reduce the power required for LNG tankers to maintain their speed, and the towing of escort tugs by LNG tankers to prevent escort tugs from generating noise.

277. In its final Environmental Analysis Report of 30 June 2021, the MELCC dug its heels into its newly-adopted zero-tolerance approach and affirmed that the *only* effective measure to counter risks posed to belugas by subaquatic noise was "avoidance", *i.e.*, preventing the navigation of *any* LNG tanker for seven out of twelve months each year.[455]

278. In its final environmental analysis report dated 30 June 2021, the MELCC cited for the first time a new (and as of then, still unpublished) scientific study as the main basis for evaluating the risk to belugas and for its sudden adoption of an intransigent zero-noise approach in relation to belugas. This new scientific study itself cited new, previously undisclosed and merely preliminary data.**[456]** The authors of the study included one of the individuals (Robert Michaud of the GREMM) who acted as a biased intervenor dead set against the Project that the BAPE Commission of Inquiry had mischaracterized as a "Québec Government expert" during the public hearings.[457] In plain disregard of fairness and due process, the Symbio Project team was never granted the opportunity to comment upon this new scientific study or analyse its data or findings before July 2021, when the Québec cabinet confirmed it had rejected the Project.

279. The MELCC also simply brushed aside the large number of mitigation measures that Énergie Saguenay had proposed on the basis that Énergie Saguenay could not ascertain with certainty the efficacy of any of them and that because of this uncertainty, no mitigating impact could be ascribed to them.[458] In doing so, the MELCC completely ignored the serious and credible findings of the Vard study commissioned by Transport Canada which had clearly quantified the noise reduction effects that are likely to be generated by each of the 11 mitigation measures that Énergie Saguenay was actively considering.[459] The MELCC thus imposed an

---

454 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-53, p. 67.

455 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, pp. 32-36.

456 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, pp. 32-33 (the MELCC quoted the study as "Vergara et al., 2021, via MPO 2021"). The study, which had not yet been published at the time and was never shared with GNLQ, is Vergara et al., "Can you hear me? Impacts of underwater noise on communication space of adult, sub-adult and calf contact calls of endangered St. Lawrence belugas (Delphinapterus leucas)", Polar Research 2021, 40, 5521, **Exh. C-00273**. This study was published only on 15 July 2021, two weeks after the MELCC-DGEES issued its final report on 30 June 2021.

457 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, p. 171 fn 63, p. 181 fn 68, p. 328.

458 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, p. 33-34.

459 GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-48, pp. 56-58, citing Andrew Kendrick and Rienk Terweij (Vard Marine Inc.), Vard Marine Report, Ship Underwater Radiated Noise, report 368-000-01, rev 3 (9 January 2019), **Exh. C-00270**; IMO, Marine Environment Protection Committee, Ship Underwater Radiated Noise Technical Report and Matrix Submitted by Canada - key excerpts from the Vard Marine Inc.

exceedingly rigid standard exclusively on Énergie Saguenay and its Project while refraining from applying anything remotely similar to that standard to the marine traffic activities of other users of the Saguenay fjord.

280. The MELCC's rigid standard of tolerating no further increase in subaquatic noise was not based in any scientific research, flatly contradicted the longstanding federal and provincial policy in favour of increasing (rather than restricting) commercial traffic in the Saguenay River, and had nothing to say about why daily ferries, pleasure craft and indeed whale watching ships, would not be subject to the same moratorium. In other words, MELCC's newly-announced approach was wholly arbitrary and specifically targeted GNLQ ships.

281. Even though Québec Environment Minister Benoit Charette did not refer to belugas as one of the "three core criteria" of the Government's decision-making process at his press conference on 24 March 2021,[460] the 21 July 2021 Cabinet Decision of the Québec Government refusing to authorise the Project nevertheless cited potential impact on belugas as one of the main reasons for its decision.[461]

282. The espousal of an entirely new and absolutist "zero-noise" threshold was essentially pre-ordained and politically motivated to selectively target the Symbio Project. Just a few weeks after rejecting the Project on this alleged basis, the Québec Government and the Canadian Federal Government jointly invested Can$ 66 million in the construction of a mechanised transport conveyor system at the Grande-Anse terminal.[462] This government-funded conveyor belt was expected to increase industrial shipping on the Saguenay River in order to transport mining products, in direct contradiction of the "zero-noise" threshold. In his first public statement in Saguenay after the rejection of the GNLQ Project, Premier Legault said that such funding would improve the competitiveness of marine transportation in Québec and stimulate investment in the region.[463]

283. The pretextual and discriminatory nature of this suddenly-adopted and selectively-applied zero-noise threshold was further evidenced by subsequent statements made by Premier Legault in May 2022. In an interview at that time with a local radio station, Premier Legault made a point of stressing that all industrial projects were welcome in the Saguenay region. When asked why his government had then refused the Symbio Project, the Premier flatly

---

report submitted by Canada (13 May 2019), **Exh. C-00271** ; Andrew Kendrick and Rienk Terweij (Vard Marine Inc.), Vard Marine Report, Ship Underwater Radiated Noise, report 368-000-01, rev 4 (12 February 2019), **Exh. C-00272**.

460 Point de presse de M. Benoit Charette, ministre de l'Environnement (24 March 2021), **Exh. C-0031**.

461 Décret 1071-2021 Concernant le refus de délivrer une autorisation à GNL Québec inc. pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay (21 July 2021), **Exh. C-00274**, pp. 5060-5061.

462 According to Transport Minister Chantal Rouleau, such assistance would increase the terminal's capacity to handle additional ship traffic. Radio-Canada, Québec et Ottawa investissent 66 millions de dollars au Port de Saguenay (12 August 2021), **Exh. C-00275**.

463 *See* Cabinet du premier ministre du Québec, Transport maritime – Jusqu'à 33 M$ pour le développement du port de Saguenay (12 August 2021), **Exh. C-00276**; *see also* Transport Canada, Government of Canada makes major investment at Saguenay Port (12 August 2021), **Exh. C-00277**.

dismissed the notion that increased tanker traffic on the Saguenay River (and therefore, concerns about the beluga population) was the real reason for the Québec Government's rejection. He explained that:

> « Je ne pense pas que c'était la raison essentielle. La raison essentielle, c'est que c'est du gaz, d'abord du gaz qui n'est même pas fabriqué au Québec, qui vient de l'Ouest Canadien, qu'on n'a pas besoin vraiment ici au Québec, donc qu'il faudrait envoyer par bateau éventuellement en Europe. Donc je ne pense pas qu'on puisse associer le refus de GNL avec le fait qu'on va continuer de regarder des projets pour le port de Saguenay. »[464]

284. In other words, Premier Legault expressly disavowed the importance of the shipping (or indeed any other environmental) aspect of the Cabinet's refusal and confirmed that the real reason the Symbio Project had been refused was that it involved the treatment of "non-Québec" natural gas, which would then be sold on to markets outside of Québec. Beyond the economic illiteracy of this comment, Premier Legault could hardly have been clearer that the environment had nothing to do with Cabinet's refusal, and economic nationalism and protectionism everything to do with it.

285. Presumably to avoid the criticism that the Québec Government might not support more economic development projects on the Saguenay River, Premier Legault expressed his support for *other* industrial projects in the region (which would inevitably and substantially increase tanker traffic and, therefore, resulting noise on the river).[465] This reinforced the conclusion that the new criteria only applied to the GNLQ Project and had been invented to allow for the targeted rejection of the Project on political, rather than environmental, science-based, considerations.

4. The MELCC's concerns over social acceptability arose only at the 11th hour and were arbitrary and discriminatory

286. The arbitrary and discriminatory conduct of Québec's environmental review process was also demonstrated by the irrational and inconsistent interpretation and application of the requirement of "social acceptability" to the GNLQ Project.

---

464 *See* Radio Station CKYK-FM 95.7, "Le show du matin" (radio interview of 19 May 2022), **Exh. C-0033**. (Translation to English from French transcript: "I don't think that [increased tanker traffic] was the main reason. The main reason is that it is natural gas, natural gas that is not even produced in Québec, that comes from Western Canada, that we don't really need here in Québec, and that we would eventually need to send by boat to Europe. So, I don't think we can link the rejection of GNL with the fact that we would continue to look at projects for the Port of Saguenay.")

465 *Id.* Premier Legault stated that: « Non, moi, écoutez, je suis toujours pour l'équilibre. On a annoncé d'ailleurs des investissements au port, et ici. Il y a des projets comme Black Rock. C'est complexe, à cause de l'actionnariat et des anciens actionnaires mais moi je crois dans ce projet-là. Puis, tous les projets industriels sont bienvenus ». (Translation to English from French transcript: "I am always for balance. Besides, we have announced investments at the port and here, there are projects like Blackrock. It is complex with all the shareholding issues and the former shareholders, but I believe in this project. All industrial projects are welcome.")

287. The MELCC's December 2015 Directive mentioned social acceptability only once, and only as one of many impacts on the human environment of a given project to be evaluated.[466]

288. The MELCC did not send Énergie Saguenay a single written question concerning the Project's social acceptability during the environmental review process between December 2015 and March 2021. Regardless, social acceptability suddenly became a focal point of the MELCC's environmental review process as of 24 March 2021, when Québec Environment Minister Benoit Charette made it one of the three so-called "core criteria" of the Québec Government's decision-making process on the Project (without providing any details as to how to measure it or establish the criteria).

289. In its last-minute set of "follow-up" questions from 26 April 2021, disguised as mere "addenda" to the prior March 2021 set of questions, the MELCC did not even ask about the Project's social acceptability as such.[467] Rather, it suddenly asked – without any prior notice or indication – whether Énergie Saguenay had made any *changes* to the Project with regard to social acceptability following the BAPE's public hearings and the BAPE Report.

290. In response, as part of its final series of replies in June 2021, Énergie Saguenay provided the MELCC with a detailed and comprehensive reply on social acceptability that covered many key points raised by members of the public who came forward during the BAPE hearings to express concerns about the Project.[468] The Symbio Project team also provided the MELCC with copies of declarations from April 2021 by seven municipalities in the Project vicinity that had formally declared their support for the Project and its social acceptability (Saguenay; Saint-David-de-Falardeau; Sainte-Hedwidge; Saint-Charles-de-Bourget; La Tuque; Lac-Bouchette; MRC du Fjord-du-Saguenay).[469]

291. What was clear even from the BAPE Commission Inquiry Report is that local and regional support for the Project was high, and that local reaction was what typically drove the consideration of social acceptability.[470]

292. In its final environmental analysis report of 30 June 2021, the MELCC merely echoed the BAPE Report's alleged inability to reach any conclusion on the social acceptability of the

---

466 MELCC-DGEES, Directive pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay par GNL Québec inc., Dossier 3211-10-021, Doc. No. PR2.1 (December 2015), p. 18, **Exh. C-00198**.

467 *See* MELCC-DEEPHI, Addenda à la demande d'engagements et d'informations complémentaires – Annexe (26 April 2021), Doc. No. PR10.9, **Exh. C-00268**, Question 53.

468 GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-53, pp. 65-74.

469 GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, p. 70 and Annex R-53.

470 BAPE, Rapport 358 – Projet de construction d'un complexe de liquéfaction de gaz naturel à Saguenay, Rapport d'enquête et d'audience publique (24 March 2021), **Exh. C-00250**, pp. 277, 281-282.

Project.[471] This conclusion was purely arbitrary and at odds with Québec's previous practice in determining the social acceptability of other large projects. In essence, it selectively transformed the "social acceptability" criterion from a rational, evidence-based requirement into a *carte blanche* within which all sorts of political intents and purposes could be disguised at the end of the process without any possibility for the proponent to reply or respond.

293. The contemporaneous evidence painted a very different picture. To recall, in July 2019, the City of Saguenay passed a resolution in favour of industrial projects in the Saguenay port area. Over a year later, in September 2020, six years into development of the Project, survey results confirmed that (i) more than half of local residents (52.3 %) were favourable to the Project (ii) approximately a third (32.7 %) potentially in favour , and (iii) only less than a tenth (9.4%) expressed firm opposition:[472]

Position face au projet Énergie Saguenay tel que présenté au BAPE	Saguenay–Lac-Saint-Jean	Secteurs		Niveau d'information	
		Saguenay	Lac-Saint-Jean	Informé	Non informé
	n=804	*n=454*	*n=350*	*n=546*	*n=248*
Favorable à la réalisation du projet	52,3 %	57,1 %	44,7 %	53,2 %	51,0 %
Potentiellement favorable, mais à certaines conditions	32,7 %	30,2 %	36,4 %	32,7 %	33,4 %
Opposé à la réalisation du projet	9,4 %	7,5 %	12,4 %	11,9 %	4,7 %
Ne sait pas/Ne répond pas	5,7 %	5,1 %	6,5 %	2,2 %	10,9 %

Q3. Quelle est votre position face au projet Énergie Saguenay tel qu'il sera présenté au BAPE?

[SEGMA Survey 20 September 2020, Exh. C-0278]

294. This was confirmed in late September 2020, when Québec Minister for Regional Economic Development Marie-Ève Proulx stated that the construction of a liquefaction plant on the shores of the Saguenay river was "a promising project for the future of Québec", had "the overall support of "social, economic and municipal stakeholders" and that "there is a very concrete will to move forward with this project."[473]

295. As such, the MELCC's conclusion on social acceptability was clearly at odds with evidence of strong regional and municipal support for the Project.

X. The MELCC's environmental report was based on criteria that had not previously been applied and were not applied ever since to any other project proponent in Québec

296. In its final environmental report dated 30 June 2021 the MELCC concluded that:

> « L'analyse effectuée par le MELCC au terme de la [procédure d'évaluation et d'examen des impacts sur l'environnement] ne permet pas de conclure à l'acceptabilité environnementale du projet, et ce, malgré le fait que GNL Québec

471 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, pp. v-vi, 63-65, 75.

472 SEGMA Recherche, Projet Énergie Saguenay : notoriété, niveau d'information, sources consultées et opinion de la population de la région du Saguenay–Lac-Saint-Jean (September 2020), Doc. No. DA6.4, **Exh. C-00278, Exh. C-00279**.

473 *See* CBC, "With environmental review still pending, Québec minister touts benefits of natural gas project", 25 September 2020, **Exh. C-0030**.

> inc. se soit engagé à remplir la plupart des engagements demandés par le MELCC et les autres ministères et que la PÉEIE ait permis d'obtenir certains gains environnementaux. En effet, le bilan des GES au niveau mondial, la transition énergétique, le bilan des avantages et coûts du projet et l'impact appréhendé sur la population de bélugas de l'ESL demeurent des enjeux pour lesquels une grande part d'incertitudes subsiste. De plus, l'équipe d'analyse arrive à la même conclusion que celle de la commission du BAPE sur le projet, à savoir qu'elle n'est pas en mesure de se prononcer sur l'acceptabilité sociale à l'égard de celui-ci. »[474]

297. The criteria applied by the MELCC in its Report dated 30 June 2021 had never been applied before (nor have they been applied ever since) to a project proponent in Québec.

[redacted]

299. In effect, the MELCC singled out the GNLQ Project and applied environmental criteria and processes that were substantially different compared to those applied to other project proponents.

474 MELCC, « Rapport d'analyse environnementale pour le projet Énergie Saguenay Complexe de liquéfaction de gaz naturel à Saguenay par GNL Québec inc. Dossier 3211-10-021 » (30 June 2021), **Exh. C-00269,** p. 75.

475 [redacted]

476 [redacted]

Y. The Québec Government rejected the Project on the basis of the discriminatory, arbitrary and draconian criteria invented by the Legault Government at the eleventh hour

300. Ultimately, the Québec Government refused to authorise the Symbio Project. On 21 July 2021, Environment Minister Charette and the Saguenay Minister of Municipal Affairs Andrée Laforest organized a press conference during which they announced the Québec Government's refusal, which was accompanied by a press release from the MELCC.[477] According to Minister Charette, whilst the Québec Ministers had a « préjugé favourable » and even « enthousiasme » towards the Project,

> « Nous sommes en mesure de vous confirmer, avec l'analyse qui a été faite, que le projet Énergie Saguenay ne pourra pas voir le jour. L'usine de liquéfaction, qui est au cœur de cette démarche, ne verra pas le jour. »[478]

301. During the press conference, Minister Charette stated that the MELCC refused the Project on the basis that it had not been able to demonstrate that it could contribute to the diminution of global greenhouse gas emissions, because:

> « les pays clients seraient sans doute à même de poursuivre avec cette énergie plutôt que d'envisager d'autres énergies de transition. Au niveau des émissions mondiales, là aussi n'ayant aucune garantie des acheteurs de ce gaz naturel liquéfié, nous ne pouvons pas être convaincus que ce sont des énergies plus polluantes qui sont remplacées par le gaz naturel liquéfié. Ultimement, toutes les démarches qui devaient se faire en amont, c'est-à-dire la réduction des émissions de gaz à effet de serre ici même au Québec, ne nous ont pas convaincus des résultats. »[479]

302. This was despite the Minister's affirmation a few minutes later that the review process was limited to GHG emissions on Québec's territory, not in Alberta or elsewhere:

> « Naturellement, nous avons une compétence sur le territoire québécois, donc ce sont davantage les émissions en sol québécois qui étaient évaluées. Cependant, plusieurs ont eu l'occasion d'exprimer leurs inquiétudes sur les émissions qui pouvaient être confirmées à la source même étant donné la nature des puits qui auraient servi à alimenter ce gazoduc. Notre mandat est d'évaluer les émissions en sol québécois, mais oui la question peut être discutée à travers le BAPE, notamment, et les inquiétudes de certains ont pu être exprimées à ce moment-là. »[480]

---

477 MELCC, « Communiqué de presse - Le gouvernement du Québec n'autorise pas le projet de liquéfaction de gaz naturel Énergie Saguenay » (21 July 2021), **Exh. C-00282**; Radio-Canada, GNL Québec - le gouvernement rejette le projet (21 July 2021), **Exh. C-00283**.

478 Transcript of press conference dated 22 July 2021 prepared by TACT Conseil, **Exh. C-00284**, pp. 1, 6.

479 *Id.*

480 *Id.*

303. It was therefore clear that the MELCC refused the Project solely on the basis of the newly-espoused criteria announced in only March 2021, that were not even within the competence of the Québec review, and on the basis of ignoring its own policy on LNG and the evidence the Claimant had submitted demonstrating the Project's significant contribution to reducing GHGs through energy substitution. Moreover, Minister Charette did not even mention the protection of the beluga whales or the social acceptability of the Project as alleged grounds for rejection of the Project. He nonetheless reassured the public that the Government would support *other* projects in the Saguenay region (such as those advanced by Rio Tinto, one of the province's largest historical emitters of GHGs), just not GNLQ.[481]

304. At the same time, the Minister Charette declared that without GNLQ there would also be no BAPE process for Gazoduq, which "died" with the GNLQ Project.[482]

305. The GNLQ and Gazoduq teams as well as Symbio investers were shocked and stunned.[483] No one had anticipated such an outcome. As Me Duchaine notes, project refusals following an environmental assessment are extremely rare: out 800 projects since 1994, the Québec Government has refused only 7 projects, six of which refused due to a moratorium on residual waste sites.[484]

306. The announcement of Minister Charette in the press conference of 21 July 2021 was rubber stamped by the Cabinet Decision of 21 July 2021, which was only released to the public on 11 August 2021 (**Cabinet Decision**). In that Decision, the Québec Government refused to authorise the Project.[485]

307. The Cabinet Decision was based almost exclusively on criteria that were not listed in the MELCC Directive, that had never been imposed on another proponent before July 2021, and without any specific reason explaining the Decision's departure from precedent.

308. In its Decision, the Québec Government cited Énergie Saguenay's alleged failure to address the last-minute, unprecedented "core criteria" of the Project's projected contribution to global GHG emissions and to the energy transition towards cleaner fuels, as the primary reasons for rejecting the GNLQ Project.[486] This was notwithstanding the evidence and the conclusions from MELCC's own climate change experts demonstrating the Project's compliance even with these late-announced criteria, and the Québec Government's own support for LNG as an effective transitional energy supply and key contributor to the

---

481 *Id.*

482 *Id.*

483 Witness Statement of Tony Le Verger (21 November 2023), para. 212, **CWS-3**.

484 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 3, 47-48, 56, 126.

485 Gouvernement du Québec, Décret 1071-2021, Concernant le refus de délivrer une autorisation à GNL Québec inc. pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay, Gazette Officielle du Québec, 11 août 2021, 153e année, no 32 (21 July 2021), **Exh. C-00274,** p. 5059.

486 *Id.*, pp. 5060-5061.

transition towards greener energy. Just one day before rejecting the GNLQ Project, Québec's Minister of Energy and Natural Resources announced new public funding to extend the province's natural gas pipeline system and declared that: « [l]e gaz naturel est une énergie de transition profitable pour le Québec ».[487]

309. In its Cabinet Decision, the Québec Government further cited the potential impact on belugas as one of the main reasons for refusing to authorise the GNLQ Project.[488] This was despite Premier Legault's public admission many months later that the addition of new tanker traffic on the Saguenay river was not what drove the rejection of GNLQ, and his government's continued openness to projects that would result in increased ship traffic in the Saguenay river.

310. In its Cabinet Decision, the Québec Government also cited the uncertainty surrounding the GNLQ Project's social acceptability as one of the main reasons for refusing to authorise the GNLQ Project.[489] That is despite the fact that this "core criterion" did not even appear in the MELCC's press release announcing the Cabinet Decision.[490] On the contrary, during his press conference of 21 July 2021 on the Cabinet Decision, Québec Environment Minister Charette admitted that the Cabinet did not even evaluate social acceptability because the first two conditions had allegedly not been met.[491]

311. As Me Duchaine notes in her report, these manifest irregularities were compounded by the fact that it was unlawful for the Québec Government to even subject the following aspects of the GNLQ Project to an environmental assessment under the EQA, since they fell within the exclusive federal jurisdiction of the Government of Canada: public property; navigation; the protection of belugas; and international trade.[492] Me Duchaine further found that in doing so, the Québec Government, the Environment Minister and the MELCC had

---

487 Gouvernement du Québec, « Prolongement du réseau de distribution de gaz naturel – Québec investit plus de 1 M$ pour le développement économique en Montérégie » (21 July 2021), **Exh. C-0034** (Translation to English from French original: "Natural gas is a profitable transitional energy for Québec")

488 Gouvernement du Québec, Décret 1071-2021, Concernant le refus de délivrer une autorisation à GNL Québec inc. pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay, Gazette Officielle du Québec, 11 août 2021, 153e année, no 32 (21 July 2021), **Exh. C-00274**, pp. 5060-5061.

489 *Id.*, pp. 5060-5061.

490 MELCC, « Communiqué de presse - Le gouvernement du Québec n'autorise pas le projet de liquéfaction de gaz naturel Énergie Saguenay » (21 July 2021), **Exh. C-00282** ; Radio-Canada, GNL Québec - le gouvernement rejette le projet (21 July 2021), **Exh. C-00283**.

491 Transcript of press conference dated 22 July 2021 prepared by TACT Conseil**, Exh. C-00284**, p. 4 (« Benoît Charette : Nous avions trois conditions au départ. Souvenez-vous, au moment du dépôt du rapport du BAPE, j'avais exprimé les trois conditions : l'acceptabilité sociale, la transition énergétique et la baisse au niveau mondial. Nous n'avons pas eu à évaluer l'acceptabilité sociale compte tenu que les deux premières conditions n'étaient pas respectées. Nous sommes conscients qu'il y a des gens qui appuyaient très fortement ce projet . . . mais nous n'avons pas eu à évaluer et à pondérer les gens en faveur versus ceux en défaveur. »).

492 Expert Report of Me Christine Duchaine, p. 50.

knowingly exceeded the boundaries of pronvicial environmental review powers by considering these areas as part of the environmental assessment of the GNLQ Project.[493]

Z. The Federal Government's environmental assessment of the GNLQ and Gazoduq Projects was nothing more than an exercise in going through the motions, and their ultimate refusals were arbitrary, predetermined and politically motivated

312. Notwithstanding the Québec Government's refusal of 21 July 2021, the Federal Government was still mandated to proceed with its own environmental assessment of GNLQ under the CEAA regime. However, the Federal Government's actions would altogether overturn Énergie Saguenay's reasonable expectation that its Project would be treated fairly and equitably through an evidence-based procedure, in compliance with fundamental requirements of due process.

313. Much like the Provincial environmental review process, the Federal environmental assessment process for GNLQ appeared – at least initially – to be proceeding as planned. To recall, by the first half of 2021, GNLQ had:

- Provided formal notice of the GNLQ Project to the CEAA in November 2015;[494]
- Received detailed instructions from the CEAA on the parameters of the required environmental assessment, in the form of the binding EIS Guidelines the CEAA issued in March 2016;[495]
- Submitted to the CEAA in February 2019 a complete and comprehensive Environmental Impact Statement covering the elements identified by the CEAA in the EIS Guidelines; and
- Responded to two extended rounds of technical information requests from the CEAA and the IAAC (its successor entity by reason of the *Impact Assessment Act 2019*), the

493 Expert Report of Me Christine Duchaine, 20 November 2023, p. 50.

494 GNL Québec inc., Avis de projet, Doc. No. PR1.1 (November 2015), **Exh. C-00197.**

495 Guidelines for the Preparation of an Environmental Impact Statement for Saguenay Energy Project Liquefied Natural Gas Export Terminal (14 March 2016), **Exh. C-00199**. See also Expert Report of Mr. Rodney Northey, signed 20 November 2023, para. 84 (CER-2).

first round of questions lasting from August 2019 to July 2020,[496] and the second from August 2020 to December 2020.[497]

314. In contrast to the arbitrary and discriminatory treatment meted out by the MELCC and the Québec Government from March 2021 onwards, GNLQ's interactions with the CEAA and the IAAC was – at least initially – proceeding normally. Indeed, on 14 May 2021, the IAAC advised the GNLQ Project team by letter that:

> « [à] la suite de l'examen des réponses [de GNLQ], en collaboration avec les experts gouvernementaux, l'Agence confirme que [GNLQ] a acheminé les renseignements nécessaires pour permettre à l'Agence de terminer l'analyse environnementale du projet ».[498]

315. In other words, the GNLQ was deemed to have provided a satisfactory level of information so as to enable the IAAC to advance its analysis of the GNLQ Project in the Federal environmental assessment process.

316. However, hard on the heels of Québec's refusal, and in obvious reaction to it, GNLQ's Federal environmental assessment process took an inauspicious turn. On 14 September 2021, in the midst of a snap Federal election campaign, a spokesperson of the incumbent Liberal Party of Canada and of the Prime Minister's Office flatly announced that the Project "will not see the light of day", despite GNLQ's Federal environmental assessment process being still pending at that time. Specifically, the Liberal Party spokesperson was quoted as saying:

> « Le Parti libéral du Canada est d'accord avec le gouvernement du Québec et n'appuie pas ce projet. Il est clair pour nous qu'il ne verra pas le jour ».[499]

---

496 Letter from Anne-Marie Gaudet to Pat Fiore, « Étude d'impact environnemental du Projet Énergie Saguenay (le Projet) – – Première demande d'information sur l'étude d'impact environnemental et révision de la portée du projet en lien avec la navigation (No dossier 005543) » (20 August 2019), **Exh. C-00285**; Agence canadienne d'évaluation environnementale,Demande d'information no 1, Évaluation environnementale du projet Énergie Saguenay (20 August 2019), **Exh. C-00286**; Letter from Geneviève Bélanger to Pat Fiore « Étude d'impact environnemental du Projet Énergie Saguenay (le Projet) — Complément à la demande d'information no 1 sur l'étude d'impact environnemental (No dossier 005543) » (11 October 2019), **Exh. C-00287** Letter from Johannie Martin to Pat Fiore « Projet Énergie Saguenay – Réponses à la demande d'information no 1 du 20 août 2019 et au complément à la demande d'information no 1 du 11 octobre 2019 » (4 February 2020), **Exh. C-00288**, Letter from Johannie Martin to Pat Fiore « Projet Énergie Saguenay – Réponses à la demande de concordance du 4 février 2020 » (3 July 2020), **Exh. C-00289.**

497 Letter from Johannie Martin to Pat Fiore « Projet Énergie Saguenay – Deuxième demande d'information » (28 August 2020), **Exh. C-00290**; Letter from Johannie Martin to Tony Le Verger « Projet Énergie Saguenay – Réponses à la demande d'information no 2 du 28 août 2020 » (24 December 2020), **Exh. C-00291**.

498 Letter from Johannie Martin to Tony Le Verger, « Projet Énergie Saguenay – Réponses à la lettre concernant les réponses à la demande d'information du 24 décembre 2020 et finalisation de l'analyse environnementale du projet » (14 May 2021), **Exh. C-00292**.

499 @AShields_Devoir, Twitter account of Alexandre Shields (journalist at Le Devoir), tweet dated 14 September 2021, **Exh. C-0036,** (English translation from French original: "The Liberal Party of Canada agrees with the Québec Government and does not support this project. It is clear to us that it will not see the light of day").

317. The message underlying the Liberal Party's pre-emptive condemnation of GNLQ seemed to be all but officially confirmed, when two leading reputable Québec newspapers ran stories the next day which repeated it in materially identical terms:

a. According to an article appearing in *Le Devoir* on 15 September 2021, « [l]e Parti libéral du Canada a pour sa part affirmé, pour la première fois, son opposition au projet. « *Il est clair pour nous qu'il ne verra pas le jour*. Plusieurs enjeux environnementaux, tant au provincial qu'au fédéral, demeurent préoccupants et le gouvernement du Québec a refusé le projet au terme de son évaluation », a fait valoir un porte-parole du parti, qui s'est dit étonné de la décision de GNL Québec de poursuivre l'évaluation environnementale fédérale. » (emphasis added);[500] and

b. According to another article appearing in La Presse also on 15 September 2021, *«* Par courriel, un porte-parole du Parti libéral a quant à lui indiqué que *l'équipe de Justin Trudeau* « *est d'accord avec le gouvernement du Québec et n'appuie pas ce projet* ». *« Il est clair pour nous qu'il ne verra pas le jour*. Plusieurs enjeux environnementaux, tant au provincial qu'au fédéral, demeurent préoccupants et le gouvernement du Québec a refusé le projet au terme de son évaluation » » (emphasis added).[501]

318. The Canadian Government never disavowed the content of the initial tweet of 14 September 2021 or the subsequent Québec news articles of 15 September 2021. The underlying message at the time against GNLQ could only be understood as the official position of the Canadian federal government executive ("*l'équipe de Justin Trudeau*"), whose condemnation extended to not only the fate of Project but also to Énergie Saguenay's perseverance with the Federal environmental assessment process.

319. The Federal Government's eventual refusal of the Project was in other words a preordained conclusion as early as September 2021. As GNLQ personnel would learn subsequently, in light of the Québec Government's disapproval of the Project as confirmed in July and August 2021, the incumbent Liberal Party did not want to run the political risk of contradicting Québec over a major infrastructure project at a critical juncture in its Federal electoral campaign.[502] It thus unfairly and arbitrarily pre-empted the outcome of the Project's Federal environmental assessment process, less than two months after the Québec Government's had made public its refusal to authorise the Project.

320. The incumbent Liberal Party was indeed returned to power in the ensuing October 2021 Federal elections, albeit under a minority government. In February 2022, consistent with the statement of September 2021, the Federal Government refused to grant approval of the

---

500 Le Devoir, «Mises à pied massives chez GNL Québec et Gazoduq » (15 September 2021), **Exh. C-00293**.

501 La Presse, «O'Toole réitère son appui à GNL Québec et s'attaque aux bloquistes » (15 September 2021), **Exh. C-00294**.

502 Seamus O'Regan, then Minister of Energy, Mines and Natural Resources, confirmed to Mr Illich that the Federal Government's decision in February 2022 was pre-ordained, on the basis that the Provinces "completely drive the process", and the Federal Government rejected it simply on the basis of Québec's prior decision. *See* Witness Statement of Jim Illich (21 November 2023), para. 279, **CWS-1**

Project, essentially parroting the manifestly arbitrary grounds previously relied upon by Québec.

321. On 7 February 2022, the Federal Minister of Environment and Climate Change Canada released its decision statement refusing to authorize the Project under the CEAA (**Decision Statement**).[503] Although the decision referred to the IAAC's Environmental Assessment Report (**IAAC Report**), it simply rendered concrete what was already a *fait accompli* in light of the Liberal Party spokesperson's announcement of September 2021. As put by Mr Northey, "Canadian law does not permit a decision-maker to express the final outcome *prior to* statutory procedures that inform its exercise of discretion ... it was contrary to the lawful exercise of discretion under the CEAA [2012] for the governing political party to [pre-emptively] declare the outcome of the federal environmental assessment".[504]

322. Multiple deficiencies in both the Decision Statement and the underlying IAAC Report would only confirm the politically dictated and predetermined nature of Federal Government's own refusal. The most egregious of these concerned the issues of (upstream) GHG emissions, belugas, and Indigenous cultural heritage.

323. On GHG emissions, the IAAC Report alleged that the Project would result in significant adverse transboundary environmental effects "*given the effect that the Project's GHG emissions could have on the achievement of Québec and Canada's GHG emission and climate change objectives*".[505] Much like the MELCC, the IAAC's conclusion conveniently overlooked a fact underlined by MELCC's climate change specialist, which concluded that the Project was not incompatible with either Québec's objectives nor the Paris Accord's requirements on reducing GHG emissions.[506]

324. Most striking about this aspect of the IAAC Report was its consideration of *upstream* GHG emissions. This was both unfair to the GNLQ Project and inconsistent with the legally binding parameters governing the Federal environmental assessment process under CEAA 2012. As the Project's EIS Guidelines unambiguously held, "*production of upstream GHGs [is]* ***not*** *considered to be part of the Project for the purposes of the environmental assessment*" (emphasis added).[507] According to Mr. Northey, the legal implication was that the environmental effects of upstream GHG emissions was "excluded from the scope of the

---

503 *See* News Release Government of Canada Releases the Final Decision on the Énergie Saguenay Project (7 February 2022), **Exh. C-00295.**

504 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 43, 47 (**CER-2**).

505 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, pp. 46, 49

506 *See* Avis des experts – Recueil des avis issus de la consultation auprès des ministères et organismes, Complexe de liquéfaction de gaz naturel à Saguenay - Projet Énergie Saguenay, Dossier 3211-10-021, 8-17 juin 2021 (Doc. No. PR9.3), p. 48, **Exh. C-0032** (Translation to English from French original: "[i]n sum, we consider that the project is not incompatible with Québec's GHG emission reduction objectives or with the GHG emission reduction requirements set out in the Paris Agreement").

507 Guidelines for the Preparation of an Environmental Impact Statement for Saguenay Energy Project Liquefied Natural Gas Export Terminal (14 March 2016), **Exh. C-00199**, p.4.

[GNLQ Project] … the CEAA [2012] does not require assessment of effects caused by activities … excluded from the scope of the [P]roject."[508]

325. It is telling that IAAC's draft Report dated September 2021 originally stipulated that "[*t]he greenhouse gas emissions produced upstream (production, treatment and transportation) are not considered to be part of the Project for environmental assessment purposes*".[509] It also clarified that "*the [Federal] Minister [of Environment and Climate Change]'s decision under the CEAA 2012 will not establish whether the greenhouse gas emissions produced upstream are likely to result in significant adverse environmental effects.*" [510] Without explanation, both of these statements were absent from the final Report.

326. The IAAC Report clearly disregarded the EIS Guidelines' directive prohibiting any consideration of upstream GHG emissions, as the following paragraph exemplifies:

> "… considering the upstream emissions … cumulated with the change in land use as well as the direct and indirect emissions expected during the operation phase, the Project would represent approximately 10% of Quebec's greenhouse gas emissions and 1% of Canada's … As a result, the cumulative effects of upstream emissions, together with direct and indirect emissions from the Project, would be likely to result in significant adverse environmental effects."[511]

327. This purported analysis of the GNLQ Project's upstream GHG emissions as part of its "*cumulative effects*" was as misguided as it was arbitrary, as it contravenes CEAA 2012 by reintroducing into the scope of the Federal environmental assessment process a factor which had been expressly excluded by the EIS Guidelines.[512] As Mr Northey explained, the "exclusion of the production of upstream GHG emissions from the scope of the [GNLQ P]roject thus also meant there was no lawful basis for the [Federal environmental assessment to include the cumulative effects of the production of upstream GHG emissions."[513]

328. On belugas, the IAAC Report concluded that the GNLQ Project "*would cause significant adverse environmental effects on marine mammals, including species at risk [like the St Lawrence beluga], given the disturbance that would be caused by the tankers*".[514] The

---

508 Expert Report of Mr. Rodney Northey, signed 20 November 2023, para. 120 (**CER-2**).

509 IAAC, Draft Environmental Assessment Report for Énergie Saguenay Project (September 2021), **Exh. C-00296**, p.37.

510 IAAC, Draft Environmental Assessment Report for Énergie Saguenay Project (September 2021), **Exh. C-00296,** p.37.

511 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, pp. 48-49.

512 Expert Report of Mr. Rodney Northey, signed 20 November 2023, para. 121 (CER-2).

513 Expert Report of Mr. Rodney Northey, signed 20 November 2023, para. 121 (**CER-2**).

514 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.52

IAAC's analysis focussed on anthropogenic noise from marine shipping,[515] which it repeatedly described as "*one of the main threats to the recovery of [the beluga] population*".[516] In the course of this, it also dismissed GNLQ' technological noise mitigation proposals as "*unproven*".[517]

329. However, the IAAC Report's consideration of this issue similarly violated the scope of the GNLQ Project's Federal environmental assessment process. As the legally binding EIS Guidelines made clear, "*the [Federal] Minister [of Environment and Climate Change] will not make a decision under CEAA 2012 about whether […] marine shipping associated with the Project … [is] likely to cause significant adverse environmental effects*".[518] According to Mr Northey, all of the GNLQ Project's shipping (which was "the responsibility of third party 'specialized transporters'") was thus beyond the scope of its Federal environmental assessment, including any direct or cumulative effects on belugas.[519] In other words, it was prima facie unlawful for the IAAC to analyse and assess the GNLQ Project's marine shipping effects, even those said to affect the species.

330. Without prejudice to the above, the IAAC Report's conclusion on belugas was in any event tainted by unfairness and arbitrariness. Like its MELCC counterpart, the IAAC's purported analysis of underwater noise also relied on the same study co-authored by biased GREMM researcher Robert Michaud.[520] Even though this study was published on 15 July 2021, it was not referenced in the draft IAAC Report dated September 2021, but was only introduced into the 'final' version of November 2021. In other words, GNLQ was again deprived of an opportunity to comment on it during the course of the Federal environmental assessment process, in the same manner as it was during the MELCC review process.

331. Further, the IAAC Report mirrored its MELCC counterpart by advocating "*avoidance, i.e., the absence of overlap between vessels and beluga whales*", as the most effective measure to mitigate underwater noise.[521] In this context, it mooted "*locating the [GNLQ] terminal on a site that would have avoided an increase in marine shipping in the Saguenay River*" as "*a*

---

515 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.54, 56-57, 58-59

516 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, pp.53, 62

517 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.60

518 Guidelines for the Preparation of an Environmental Impact Statement for Saguenay Energy Project Liquefied Natural Gas Export Terminal (14 March 2016), **Exh. C-00199**, p.4.

519 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 88, 100 (**CER-2**).

520 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.56.

521 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.61.

solution of less impact".[522] This was tantamount to questioning the very possibility of the Symbio Project's marine shipping element, which was absurd because the Project's very rationale was, as the IAAC Report acknowledged, "*to process, liquefy and transport Canadian natural gas to world markets by tanker*" (emphasis added).[523]

332. The Report's conclusion on this issue strikes as all the more unfair, arbitrary and absurd given that there was never any actual critique levelled against GNLQ's project site location during the two extended rounds of technical information requests lasting from August 2019 to December 2020. For the IAAC to ventilate such a fundamental concern (which was readily apparent from the outset and thus should have been raised at the earliest opportunity) at the eleventh hour, towards the very end of the Federal environmental assessment process without giving GNLQ any chance to respond, exemplifies the bad faith of the federal conclusions.

333. On Indigenous cultural heritage, the IAAC Report found that the GNLQ Project was likely to cause "[s]ignificant effects on the cultural heritage of the Innu First Nations, given the disturbance of marine mammals that would be caused by the increase in marine traffic".[524] In reaching this conclusion, the Report repeatedly asserted that belugas were a "*species of cultural significance*" for these First Nations,[525] or were otherwise representative of "*the Innu way of life and culture*".[526]

334. However, the IAAC failed to substantiate the underlying premise of this particular conclusion against the GNLQ Project. As Mr Northey summarised,

> "the [IAAC]'s findings for Port Terminal's effects on cultural heritage was based on uniquely and strikingly low standards of evidence … the Agency's reasoning with respect to Indigenous effects arising from [the GNLQ] Project effects on beluga whales … referenced no independent evidentiary foundation explaining these Indigenous effects. For example, the EA record contained many statements that beluga whales are 'important to the cultural heritage of the Innu First Nations, but no further descriptions as to what that importance is, what that heritage entails in terms of beliefs and practices (e.g. stories, beliefs, art or ceremonies), and what Indigenous community knowledge might contribute to the assessment of effects on beluga whales. Instead, relevant submissions by the Indigenous communities

---

522 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037** p.61.

523 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.20.

524 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.iv.

525 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, pp. 190, 193, 204, 207-208

526 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, pp. 200, 204

> - such as the Innu Nations - largely echoed other parties' submissions on beluga whales more generally."[527]

335. In other words, IAAC, without furnishing its own explanation or evidence, merely assumed that belugas were somehow important to the Innu First Nations' cultural heritage. It was also entirely reliant on its own Report's parallel finding about the impact of marine shipping on belugas, which was an unlawful conclusion that contravened the EIS Guidelines. Given such procedural and forensic deficiencies, the IAAC Report's conclusion on Aboriginal and treaty rights answers the dictionary definition of arbitrary, i.e. "*based on a desire or idea or chance rather than reason*".[528]

336. With regard to the Gazoduq Project, it too was subject to the arbitrary and discriminatory conduct that had been meted out to the GNLQ Project.

337. To recall, in a 21 July 2021 press conference, Québec Minister for Environment Benoît Charette stated that the Gazoduq Project "dies together" with GNLQ. Further, on 23 February 2022, Minister Charette stated in a radio interview that it was "hard to believe" that Gazoduq would come to fruition given that the GNLQ Project "no longer exists."[529]

338. Subsequently on 8 September 2022, Premier Legault would similarly affirm that "i]l n'y aura pas de pipeline ou de gazoduc qui va passer sur le territoire du Québec". Both he and Minister Fitzgibbon would add that "the [Gazoduq] file is closed."[530]

339. Such prejudicial statements were made even though Gazoduq's environmental assessment process was still officially ongoing. The IAAC would even send 'reminder' letters for Gazoduq to file its assessment materials.[531] The environmental impact assessment for the Gazoduq Project was only officially terminated by the IAAC on 18 July 2023, and only after the Symbio Project team had given up any hope of reviving the Project.

340. Minister Charette's arbitrary intervention was taken in manifest disregard of fundamental requirements of due process and the rule of law. Neither Symbio nor Gazoduq were able to present their views or defend their interests against this impromptu statement. The Québec Government offered no reasoning whatsoever to support a *de facto* summary dismissal of

---

527 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 195, 200 (**CER-2**).

528 Cambridge Dictionary Definition of Arbitrary, **Exh. C-00297**.

529 Radio Canada, «Rejet de GNL Québec par Ottawa : Gazoduq dit évaluer les « prochaines étapes » » (23 February 2022), **Exh. C-00298**, Charette: "Il est difficile de croire que le projet de Gazoduq pourrait se concrétiser alors que le projet GNL, pour lequel il se construit, n'existe plus."

530 Le Quotidien, « Aucun gazoduc sur le territoire québécois, confirme Legault » (8 September 2022), **Exh. C-00299.**

531 Letter from Colette Spagnuolo to Tony Le Verger, "Three-year time limit to submit required information and studies under the IAA" (16 December 2022), **Exh. C-00300**; Letter from Colette Spagnuolo to Tony Le Verger, "Final reminder of the three-year time limit to submit required information and studies under the IAA or to request a time limit extension for the Gazoduq project" (4 April 2023), **Exh. C-00301**

the Gazoduq Project, in violation of both Québec and Federal environmental law and procedural justice.

AA. Subsequent discussions with Québec and Federal Government officials confirmed that the Projects' refusals were unrelated to environmental concerns

341. What the Symbio Project team suspected to be arbitrary political decisions at the time was confirmed in the months that followed the rejection by first the Québec, and then by the Federal Government.

342. These revelations were made to Symbio Project team members in multiple conversations they engaged in with senior Québec and federal public officials between February and October 2022, against the background of the illegal invasion of Ukraine the Russian Federation in February 2022. In response to Russia's aggression, the European Union (**EU**) instituted a wide array of sanctions and trade measures that severely affected the import of energy supplies from Russia, upon which several EU Member States (Germany, in particular[532]) were heavily reliant.[533] The energy crisis that began to unfold in Europe as of February 2022 emphasised the need to secure the supply of sustainably-sourced LNG from Europe's Western Allies, including Canada.

343. In light the tragic events in Ukraine, both the Québec and Federal Governments repeatedly confirmed their renewed interest in the Projects in direct conversations with Symbio Project representatives, and repeatedly admitted that environmental concerns had never been the real basis for refusal of the Project.

344. At the outset, in a 13 April 2022 phone call, Jean Philippe Fournier, a senior advisor to Québec's Minister of Finance, confirmed to Tony Le Verger that the Québec Government had spoken to the Federal Government, and that there was strong interest in starting the GNLQ Project again, on both sides.[534]

345. Symbio Project officials, heartened by this news, thereafter approached both Governments in the hope the Project might be revived. In the course of discussions that followed, they repeatedly heard frank admissions by both senior Québec and Federal officials that the initial

---

532 According to the German Federal Government, up until March 2022 Germany sourced 55% of its natural gas consumption from Russia: Bundesministerium für Wirtschaft und Klimaschutz, FAQ-Liste LNG-Terminal in Deutschland (6 March 2022), **Exh. C-00302**, p. 2. In 2021 about 33-34% of Germany's crude oil imports came from Russia: Bundesamt für Wirtschaft und Ausfurkontrolle, Crude Oil Info September 2022 (28 November 2022), **Exh. C-00303**. Following the war in Ukraine, Germany's reliance on Russian natural gas progressively fell to 0% by July 2022.

533 By way of background, in 2020 the European Union (EU) imported 57.5% of the energy it consumed, 24.4% of which was imported from Russia. Until the end of 2021, Russia was the main supplier of oil and gas to the EU. Eurostat—Statistics explained, "EU imports of energy products - latest developments", **Exh. C-00304**; Eurostat—Statistics explained, "EU energy mix and import dependency", **Exh. C-00305**.

534 Witness Statement of Tony Le Verger (21 November 2023), para. 249, **CWS-3**.

refusals had nothing to do with the environment, and were simply taken for arbitrary reasons of political expediency.

346. Through numerous discussions and phone calls between various Symbio personnel and senior Québec as and Federal political figures, it became clear that the rejection of GNLQ and Gazoduq in 2021 had been motivated by purely political calculations relating to the October 2022 provincial elections in Québec, and the Federal Government's related political calculations.[535] Among these dozens of contacts, the following stand out:

a. In a 28 March 2022 phone call, Québec's Minister of Finance confirmed to Mr Illich that he remained a firm believer in the GNLQ Project and – more tellingly – that there were "no environmental showstoppers for [the P]roject".[536]

b. On 27 May 2022 Jim Illich had a call with Martin Koskinen, Premier Legault's Chief of Staff, to discuss the prospects of relaunching the Project. He noted that several Federal ministers (specifically Ministers Joly, Champagne and Freeland) were quite open to relaunching the Project. The difficulty was getting an answer from Prime Minister Trudeau, who did not want to talk to Premier Legault.[537]

c. In a 2 May 2022 phone call between Mr Le Verger and François Pouliot, a senior economic advisor to Premier Legault's office, the latter admitted to Mr Le Verger that : «en toute honnêteté, il était facile pour nous de nous cacher derrière des raisons environnementales pour rejeter le projet, mais nous ne voulions tout simplement pas subir la pression d'un projet qui n'était pas sûr d'obtenir son financement à long terme».[538]

d. In a 9 June 2022 phone call, Minister Fitzgibbon again affirmed that Premier Legault had said nothing could be done on the GNLQ Project until after the October 2022 election, and that "[p]olitics [wa]s 100% of the reason" to refuse it.[539]

347. Similar conversations with Federal political figures only reinforced the conclusions about the Québec Government's decision-making, also confirming that the Federal Government had merely parroted the former's arbitrary decision without conducting its own good faith, independent assessment of the Project. For example, on a 3 June 2022 phone call, Seamus O'Regan, then Minister of Energy, Mines and Natural Resources, confirmed to Mr Illich that the Federal Government's decision in February 2022 was pre-ordained, on the basis that the

535 *See* Witness Statement of Jim Illich (21 November 2023), Section XIII, **CWS-1**.

536 Witness Statement of Jim Illich (21 November 2023), para. 277, **CWS-1.**

537 Witness Statement of Jim Illich (21 November 2023), para. 278, **CWS-1.**

538 Witness Statement of Tony Le Verger (21 November 2023), para. 258, **CWS-3.**

539 Witness Statement of Jim Illich (21 November 2023), para. 283, **CWS-1.**

Provinces "completely drive the process", and the Federal Government rejected it simply on the basis of Québec's prior decision.[540]

348. Minister Fitzgibbon confirmed as much in a 17 September 2022 phone call to Mr Illich, admitting that the Federal Government's own review of the GNLQ Project had been purely political. More tellingly, in response to Mr Illich's question as to whether there were any environmental concerns that might still thwart the Project's authorisation, he confirmed that there were none, but all that was required was political alignment between Premier Legault and Prime Minister Trudeau.[541] At no point was there any suggestion that environmental concerns were the genuine cause of the refusal, much less a genuine impediment to the relaunch, of the Project.

349. In fact, this impasse was caused by the strained relations between Premier Legault and Prime Minister Trudeau. In a phone call with an advisor close to Premier Legault, Mr Illich learned that Premier Legault had rejected the GNLQ Project in July 2021 not only because of his own forthcoming election, but also because Prime Minister Trudeau did not support it. In other words, the Québec Government's rejection was not driven by *bona fide* environmental concerns, but by the need for political "cover".[542] In an effort to break the impasse, and in view of the urgent requests from European countries and LNG buyers for Canadian LNG, Mr Illich sent a joint letter to both Premier Legault and Prime Minister Trudeau urging them to align on the regulatory authorization processes,[543] but to no avail.

BB. Following the war in Ukraine, GNLQ intensified its commercial efforts with European customers and the German Chancellery

350. In parallel with these political exchanges, the Symbio Project team also intensified its efforts with commercial counterparties primarily located in Europe interested in securing LNG supply from Énergie Saguenay.

351. These discussions took place in the wider political context of Europe's attempts to reduce its reliance on Russian fossil fuels in reaction to the illegal Russian invasion of Ukraine and the EU's long-term strategy to become carbon neutral by 2050 and to reach net-zero greenhouse gas emissions.[544] Énergie Saguenay was therefore uniquely positioned to secure offtake agreements with European customers and supply low-carbon, sustainably-sourced LNG to Europe.

---

540 Witness Statement of Jim Illich (21 November 2023), para. 279, **CWS-1.**

541 Witness Statement of Jim Illich (21 November 2023), para. 287, **CWS-1.**

542 Witness Statement of Jim Illich (21 November 2023), para 287, **CWS-1.**

543 Letter from Jim Illich to Prime Minister Justin Trudeau and Premier François Legault (23 June 2022), **Exh. C-00306**.

544 European Commission, "2050 long-term strategy", **Exh. C-00308**. All 27 EU Member States committed to turning the EU into the first climate neutral continent by 2050. To get there, they pledged to reduce emissions by at least 55% by 2030, compared to 1990 levels. *See* European Commission, "Delivering the European Green Deal", **Exh. C-00309**.

352. European interest in Énergie Saguenay's LNG was exemplified by several promising discussions with the German Government. Following Germany's decision to reduce Russian imports of natural gas to nearly 0%, Germany had substantially increased its reliance on coal and lignite.[545] In early 2022, the German Government decided to reactivate several mothballed coal-fired and oil-fired power plants, warning world leaders against a "fossil fuel renaissance" at COP27.[546] In 2022 alone, coal accounted for 33.3% of Germany's electricity production.[547] Unsurprisingly, the GHG emissions resulting from the increased reliance on crude oil, lignite and coal have undermined Germany's ability to meet its CO_2 emission targets.[548]

353. Against this background, the German Government was intensely interested in Énergie Saguenay's LNG export terminal. As noted by Mr Illich, German government representatives confirmed to him that they knew of no other LNG project with such strong environmental credentials.[549]

354. On 12 April 2022, Symbio Project officials met with Steffen Meyer, the Director General for Economic, Fiscal and Climate Policy at the German Chancellery, who confirmed that he had direct instructions from German Chancellor Scholz to assess the "extremely interesting" Symbio Project, and that State Secretary Kukies was "fully aligned" with the goal of making the Project a success.[550]

---

545 Clean Energy Wire, "Germany, EU remain heavily dependent on imported fossil fuels" (10 January 2023), **Exh. C-00310**. Reuters, "Energy crisis fuels coal comeback in Germany" (16 December 2022), **Exh. C-00311**.

546 *E.g.* Le Monde, "Germany's Scholz warns against fossil fuel 'renaissance'" (8 November 2022), **Exh. C-00312** («Europe's largest economy has been squeezed hard as Russian energy imports have dwindled and prices have risen following the outbreak of the war in Ukraine. Long reliant on imports from Moscow to meet its energy needs, Germany has scrambled to shore up its supplies in the face of potential winter shortages. As a result, officials had made the decision to restart mothballed coal power plants "for a short time", Mr. Scholz said. Germany would "stick to our exit from coal", the chancellor assured, with Berlin targeting a complete end for the fossil fuel in 2030. »).

547 "Coal keeps Germany's lights on" in *Wall Street Journal* (10 March 2023), **Exh. C-00313**.

548 *See*, for example, Climate Home News, "German CO2 cuts stall as coal, oil use cancel out renewable gains" (4 January 2023), **Exh. C-00314** ("Although renewable energy reached a record 46% share in Germany's electricity mix, the greenhouse gas emissions of Europe's biggest economy totalled around 761 million tonnes last year, overshooting the target of 756 million tonnes and falling behind the 2020 benchmark of a 40% cut compared to 1990 . . . Berlin aims to become carbon-neutral by 2045 and cut emissions by 65% by 2030 compared with 1990, but short-term measures to ensure energy security following Russia's invasion of Ukraine left it behind schedule"); Euractiv, "Germany's CO2 emissions stagnate despite renewables expansion" (4 January 2023), **Exh. C-00315**.

549 Witness Statement of Jim Illich (21 November 2023), paras. 258-259 ("On 12 April 2022, I met with Steffen Meyer, the Director General for Economic, Fiscal and Climate Policy at the German Chancellery, to present our LNG and green hydrogen Projects and the feedback was highly positive. Meyer confirmed that he had direct instructions from German Chancellor Scholz to assess the "extremely interesting" Énergie Saguenay Project, and that State Secretary Kukies was "fully aligned" with the goal of making the Project a success. Chancellor Scholz himself wanted this to happen . . . The Project was aligned in terms of timeline and infrastructure with Germany's ongoing plans to develop LNG terminals, whereas its liquid hydrogen potential provided a clean alternative for the phasing out of coal and LNG within a 12- to 20-year horizon"), **CWS-1**.

550 Witness Statement of Jim Illich (21 November 2023), paras. 258 *et seq.*, **CWS-1**.

355. Around that time, State Secretary Kukies visited Senior Canadian officials in Ottawa and reiterate Germany's strong interest in securing access to Canadian LNG and H2 exports from Symbio's Projects.[551]

356. In the course of these discussions, the German Government also indicated to Jim Illich on multiple occasions in 2022 that it if Canada and Québec approved the Project, it would provide financial support of GNLQ in the range of $200 to $500 million—most likely in the form of a grant or unconditioned loan.[552]

357. Germany's strong interest in the Symbio Project was paralleled by simultaneous discussions with [redacted].[554] These discussions reflected prior strong engagement between Énergie Saguenay and key players in Germany's energy industry. [redacted].[555] In July 2021, the Symbio Project team had also signed a memorandum of understanding (**MoU**) with Siemens Energy for equipment supply, technical solution and engineering support for the Project (including a potential Green Hydrogen facility) with a view to achieving carbon neutrality.[556]

358. In this political context, it is perhaps unsurprising that the Symbio Project team was able to conclude a series of successful commercial agreements within a space of a few months in

551 Witness Statement of Jim Illich (21 November 2023), para. 260, **CWS-1**.

552 Witness Statement of Jim Illich (21 November 2023), para. 262, **CWS-1**.

553 [redacted]

554 Witness Statement of Vivek Bidwai (21 November 2023), paras. 267 *et seq.*, **CWS-2**.

555 [redacted]

556 Symbio Infrastructure Limited Partnership - Siemens Energy MOU (9 June 2021), **Exh. C-00320**, clause 1.2 and clause 1.5(d).

2022, which also confirmed the strong demand for sustainably-sourced natural gas in Europe. For example:

a. On 5 June 2022, the Symbio Project team entered into a memorandum of understanding with Ukraine's Naftogaz for a term sheet for the purchase LNG and green liquid hydrogen from Canada starting from 2027.[557] As noted by Naftogaz's CEO, the agreement was an important milestone for transitioning to diverse energy supplies, which was essential to Ukraine's energy security and future economic prosperity.[558]

b. [redacted]

c. [redacted]

557 Memorandum of Understanding between Symbio Infrastructure Limited Partnership and National Joint Stock Company "Naftogaz of Ukraine" (5 June 2022), **Exh. C-00321**.

558 Offshore Energy, "Naftogaz and Symbio enter into LNG and LH2 deal" (13 June 2022), **Exh. C-00322**. *See also* Radio-Canada, "GNL Québec poursuit ses efforts pour exporter du gaz naturel vers l'Ukraine" (11 June 2022), **Exh. C-00323** (« Cette entente de collaboration commerciale concrète avec Naftogaz pour l'achat de notre gaz naturel liquéfié dès 2027, et ultimement d'hydrogène liquide vert via notre société mère Symbio Infrastructure, démontre clairement que notre projet innovant commercialement et environnementalement est plus nécessaire que jamais »).

559 [redacted]

560 [redacted]

561 [redacted]

562 [redacted]

563 [redacted]

"Strategic Projects Insurance" scheme, which covers loans or contracts with a value exceeding €10 million which have a strategic interest for French Economy, including for the supply of energy. *See* BPI France, "Strategic projects insurance", **Exh. C-00325**.

[redacted]

359. Ultimately, Symbio's efforts came to naught. Both the Québec and Federal Governments each refused and still refuse to take any lead in publicly supporting the Project. A hugely valuable project – capable of making enormous contributions from an environmental, economic and geopolitical perspective - had effectively been killed by the combined measures of Québec and of Canada, in which cynical, short-term political calculation trampled over procedural fairness, the intrinsic merit of the Project and the duty to deal with Énergie Saguenay in good faith.

III. THE TRIBUNAL HAS JURISDICTION OVER THIS DISPUTE

360. The Tribunal has jurisdiction over this dispute, as the requirements of the NAFTA, the USMCA and Article 25 of the ICSID Convention have been met.

361. The parameters of the Centre's jurisdiction are defined in Article 25(1) of the ICSID Convention, which provides that:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

362. As demonstrated in the following sections, the requirements of jurisdiction *ratione voluntatis*, *ratione temporis*, *ratione personae*, and *ratione materiae* set out in Article 25(1) of the ICSID Convention have all been fulfilled.

363. Moreover, and as described within each of these elements of jurisdiction, requirements under both the NAFTA and the USMCA have likewise been met.

364. Chapter Eleven of the NAFTA establishes a framework to promote and protect foreign investments in Canada and the United States, including by giving consent by the Parties to submit to arbitration claimed violations of the substantive obligations owed to NAFTA investors under that Chapter.

365. The NAFTA entered into force in 1994 and was terminated on 1 July 2020 upon the entry into force of the USMCA and its Protocol. This termination was, however, subject to the provisions of the USMCA that maintained in force specific provisions of the NAFTA for a defined period of time.[565] Indeed, as paragraph 1 of the USMCA Protocol confirms, the

564 [redacted]

565 The USMCA and its Protocol are both in force between the United States and Canada. *See* Government of Canada, Treaties (Excerpt), **Exh. C-0019**.

USMCA superseded the NAFTA "without prejudice to those provisions set forth in the USMCA that refer to provisions of the NAFTA."[566] As discussed throughout the remainder of this section, several of those provisions are contained in Annex 14-C of the USMCA, which operates to ensure a three-year transition period from the date of termination of the NAFTA (1 July 2020) until 1 July 2023.

366. The following discussion thus addresses jurisdictional and procedural requirements set out under both the NAFTA as well as the USMCA, to demonstrate that there exists jurisdiction under these treaties, together with the ICSID Convention.

A. The Parties Have Consented to Arbitration (Jurisdiction *Ratione Voluntatis*)

367. The Claimant consented to the submission of this dispute to the jurisdiction of the Centre by the filing of its Request for Arbitration.[567] The Respondent's consent arises through the text of the NAFTA and the text of the USMCA, as explained below.

1. The Respondent's Consent Under the NAFTA

368. Article 1122 of the NAFTA is entitled "Consent to Arbitration" and reads as follows:

> 1. Each Party consents to the submission of a claim in arbitration in accordance with the procedures set out in this Agreement.
>
> 2. The consent given by paragraph 1 and the submission of a disputing investor of a claim to arbitration shall satisfy the requirement of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties…

369. Thus, Article 1122 of the NAFTA provides the Respondent's consent to arbitration subject to the fulfilment of the conditions set out in the first and second paragraph. The requirements of both provisions are satisfied here.

370. First, Article 1122(1) of the NAFTA provides Canada's written consent as a Party of the NAFTA to the submission of this claim to arbitration. Article 1117(1) further confirms the scope of Canada's consent to arbitration under the "procedures" set out in Section B of Chapter Eleven:

> An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under: (a) Section A … and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

---

566 Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (30 November 2018), **Exh. CL-0002.**

567 Request for Arbitration, para. 21.

371. The Claimant's claims satisfy the requirements set out in Article 1117(1) of the NAFTA, as follows:

a. The Claimant is an "investor of a Party". Ruby River is, and has been at all times, a U.S. corporation established under the laws of Delaware.[568] It was incorporated on 29 April 2014 with its principal registered place of business at 651 N. Broad Street, Suite 201, Middletown, DE 19709, United States of America.[569]

b. The Claimant brings this claim on behalf of "an enterprise of another Party that is a juridical person". The Claimant submitted a Request for Arbitration pursuant to NAFTA Article 1117 on behalf of Symbio, a Québec limited partnership organized under the laws of Canada. Symbio was established on 10 October 2014 and registered on 10 February 2015, with its principal registered place of business at 4000-1 Place Ville-Marie, Montreal (Québec), H3B 4M4, Canada.[570]

c. The Claimant "owns and controls directly or indirectly" that enterprise. Ruby River majority owns and controls Symbio, as required by NAFTA Article 1117. In the first place, Ruby River holds a majority and controlling interest in Symbio through its 100%-owned subsidiary 9311-0385 Québec Inc.,[571] a company incorporated in Québec, Canada. 9311-0385 Québec Inc. owns 51.265686% of Series A (voting) Units and 70.768240% of Series B (non-voting) Units of Symbio.[572] Accordingly, Ruby River owns more than half of both the voting and the non-voting equity interests of Symbio LP and can exercise 51.265686% of the voting rights associated with Symbio—and therefore controls Symbio.[573] Moreover, Ruby River is the sole shareholder of Symbio Infrastructure GP Inc. (**Symbio GP**).[574] Symbio GP is the designated General Partner under Symbio's Limited Partnership Agreement

---

568 Ruby River Capital LLC, Certificate of Good Standing (State of Delaware), 13 February 2023, **Exh. C-0002**.

569 Ruby River Capital LLC, Certified Copy of Certificate of Formation (State of Delaware), 26 September 2022, **Exh. C-0003.**

570 *See* Symbio, Statement of Information on a Partnership in the Québec Enterprise Registry, 6 April 2022 **Exh. C-0007**; Symbio Infrastructure Limited Partnership, Certificate of Attestation, 30 September 2022, **Exh. C-0008**. *See also* Request for Arbitration, para. 14.

571 *See* 9311-0385 Québec Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-0009**; 9311-0385 Québec Inc., Certificate of Attestation, 30 September 2022, **Exh. C-0010.**

572 *See* Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), **Exh. C-0011**. *See also* Section 7.01(a) of Symbio Infrastructure Limited Partnership, Fourth Amended and Restated Limited Partnership Agreement (LPA), 28 January 2019, **Exh. C-0012 (extracts),** which specifies that Series A units have voting rights and Series B units have no voting rights.

573 *See* Section 14.01(d) of Symbio Infrastructure Limited Partnership, Fourth Amended and Restated Limited Partnership Agreement, 28 January 2019, **Exh. C-0012 (extracts),** which defines "change of control" over Symbio LP as the result of transactions whereby a new person or entity holds more than 50% "or more, by voting power, of the equity security [i.e., Series A Units] of [Symbio LP]"

574 *See* Symbio Infrastructure GP Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-0013**; Symbio Infrastructure GP Inc., Certificate of Attestation, 30 September 2022, **Exh. C-0014.**

(**LPA**).[575] Symbio's LPA states that Symbio GP, as designated General Partner: (i) "shall have the exclusive right to control the business of the Limited Partnership and is hereby authorized to take any action in furtherance of the purposes of [Symbio LP]"; and (ii) "is hereby vested with the full, exclusive and complete right, power and discretion to operate, manage and control the affairs of [Symbio LP] and to make all decisions affecting the affairs of [Symbio LP]".[576] Therefore, through Symbio GP, Ruby River enjoys full, exclusive and complete rights, power and discretion to operate, manage and control Symbio's affairs.

d. The Claimant submitted a claim to arbitration based on Canada's breach of an obligation under "Section A" of NAFTA Chapter Eleven. As described in the Request for Arbitration and in this Memorial, the Claimant alleges a breach of Articles 1102, 1103, 1105 and 1110 of Section A of NAFTA Chapter Eleven.

e. The enterprise "incurred loss or damage by reason of, or arising out of, that breach." As a result of Québec's and Canada's arbitrary, procedurally grossly unjust, expropriatory, and discriminatory conduct, Symbio has suffered loss and damage given that its value and the value of its investment vehicles was entirely lost. Symbio was established to pursue the GNLQ and Gazoduq Projects through two separate legal entities: Symbio is the 100% owner of GNL Québec Inc., a Québec corporation that was incorporated on 24 April 2014 with its principal registered place of business located at 4000-1 Place Ville-Marie, Montreal (Québec), H3B 4M4, Canada.[577] Symbio is also the 100% owner of Gazoduq Inc., a Québec corporation incorporated on 26 June 2018 with its principal registered place of business located at 4000-1 Place Ville-Marie, Montreal (Québec), H3B 4M4, Canada.[578] As explained below, Canada's measures resulted in the complete destruction of GNLQ's and Gazoduq's value, thereby causing loss and damage to Symbio.

372. Second, Article 1122(2) of the NAFTA provides that the consent the Respondent has provided under Article 1122(1) satisfies Chapter II of the ICSID Convention (Jurisdiction of the Centre, contained in Article 25). As set out below, Article 25 of the ICSID Convention requires, *inter alia*, that a "dispute" exists between a "Contracting State" and "a national of another Contracting State", which "the parties to the dispute consent in writing to submit to the Centre." The Claimant's claims likewise satisfy these requirements:

---

575 Preamble to Symbio, Fourth Amended and Restated Limited Partnership Agreement, 28 January 2019, p. 2, **Exh. C-0012 (extracts).** Symbio GP was previously named 9311-0401 Québec Inc.: see Symbio Infrastructure GP Inc., Statement of Information of a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-0013.**

576 *See* Section 6.04 of Symbio Infrastructure Limited Partnership, Fourth Amended and Restated Limited Partnership Agreement, 28 January 2019, **Exh. C-0012 (extracts)**.

577 *See* GNL Québec Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-0015**; GNL Québec Inc., Certificate of Attestation, 3 February 2023, **Exh. C-0016**.

578 Gazoduq Inc., Statement of Information on a Juridical Person in the Québec Enterprise Registry, 5 April 2022, **Exh. C-0017**; Gazoduq Inc., Certificate of Attestation, 3 February 2023, **Exh. C-0018**.

a. Canada is a "Contracting State" for the purposes of the ICSID Convention. Canada signed the ICSID Convention on 15 December 2006, deposited its instrument of ratification on 1 November 2013, and the Convention entered into force for Canada on 1 December 2013.[579]

b. The Claimant is a "national of another Contracting State". As detailed below, the Claimant is a company organized under the laws of the United States. The United States is also a Contracting State to the ICSID Convention, and has been since 14 October 1996.[580]

c. A "legal dispute" exists between the Claimant and the Respondent within the meaning of Article 25(1) of the ICSID Convention. As set out in the Request for Arbitration, the Parties hold opposite views over the question whether the Government of Québec's and the Government of Canada's fundamentally arbitrary, procedurally grossly unjust, expropriatory, and discriminatory treatment of Symbio in connection with the two Projects amount to violations of Canada's obligations under Articles 1102, 1103, 1105 and 1110 of the NAFTA, and the legal consequences arising from those breaches.[581] This dispute "aris[es] directly out of an investment". As explained below, the Claimant has made qualifying investments in Canada through Symbio, and the present dispute directly turns to the wrongfulness under the NAFTA of the Respondent's actions *vis-à-vis* those investments.

373. Third, the conditions precedent to submission of a claim to arbitration, as provided for in Article 1121(2) of the NAFTA, have also been met. The Claimant has submitted the requisite consents to arbitration and waivers in the form contemplated by Article 1121(2) and (3) in support of its Request for Arbitration,[582] a copy of which (along with the Request and supporting documentation) was delivered to the Respondent.[583]

2. The Respondent's Consent Under the USMCA

374. The Respondent's consent arises both through the text of the NAFTA, as just discussed, and the text of the USMCA.

375. Annex 14-C of the USMCA contains the Respondent's consent to submit to arbitration claims under Chapter Eleven of the NAFTA for a defined period of time. Annex 14-C of

579 ICSID, List of Contracting States and Other Signatories of the Convention (as of 25 October 2022), ICSID, **Exh. C-0020.**

580 *Id.*

581 Request for Arbitration, para. 166.

582 Ruby River Capital LLC and Symbio Infrastructure Limited Partnership, Consent and Waiver Form Pursuant to NAFTA Article 1121(3), 14 February 2023**, Exh. C-0022**.

583 Request for Arbitration, para. 33.

the USMCA is clear in its language with respect to the Respondent's consent, as follows (emphases added):

> (1) Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:
>
> (a) Section A of Chapter 11 (Investment) of NAFTA 1994;
>
> (b) Article 1503(2) (State Enterprises) of NAFTA 1994;
>
> (c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994.[20, 21]
>
> (2) The consent under paragraph 1 and the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; [. . . .]
>
> (3) A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994.

---

[20] For greater certainty, the relevant provisions in Chapter 2 (General Definitions), Chapter 11 (Section A) (Investment), Chapter 14 (Financial Services), Chapter 15 (Competition Policy, Monopolies and State Enterprises), Chapter 17 (Intellectual Property), Chapter 21 (Exceptions), and Annexes I-VII (Reservations and Exceptions to Investment, Cross-Border Trade in Services and Financial Services Chapters) of NAFTA 1994 apply with respect to such a claim.

[21] Mexico and the United States do not consent under paragraph 1 with respect to an investor of the other Party that is eligible to submit claims to arbitration under paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts).

376. On the plain text of the above provisions of Annex 14-C, four conditions are required to bring a claim to arbitration under the NAFTA as consented to by the Respondent. All four of these conditions are met here:

a. The claim must be "with respect to a legacy investment."[584] The Claimant invested substantial amounts of capital, resources and efforts during the period of 2014-2021, and held these investments on the date of termination of the NAFTA. The Claimant addresses these investments in greater detail below.

b. The claim must allege a breach of Section A obligations which, pursuant to footnote 20 to paragraph 1 of Annex 14-C, "apply" with respect to the claim. As described in the Request for Arbitration and in this Memorial, the Claimant alleges a breach

---

[584] "Legacy investment" is defined in Annex 14-C to mean "an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement." This definition is addressed in more detail with respect to issues of jurisdiction *ratione temporis* below.

of Articles 1102, 1103, 1105 and 1110 of the NAFTA of Section A of NAFTA Chapter Eleven.

c. The claim must be submitted "in accordance with Section B of Chapter 11 (Investment) of NAFTA" as well as Chapter II of the ICSID Convention. As described in this Section, the Claimant complied with all requirements stipulated in Section B of NAFTA Chapter 11 and Article 25 of the ICSID Convention.

d. The claim must be brought during the three-year transition period. The Claimant submitted its Request for Arbitration on 17 February 2023, prior to the expiration of the transition period on 30 June 2023.

377. Accordingly, each of the requirements for the Respondent's consent under Annex 14-C of the USMCA have been met and the Claimant's claims fall within the scope of that consent to arbitration under NAFTA Chapter Eleven.

378. Canada's consent to arbitration and the Claimant's filing of this Request for Arbitration perfect an agreement in writing to arbitrate under the USMCA and the NAFTA between the Parties to the dispute. Accordingly, the conditions for consent to arbitration in writing under the ICSID Convention are also met.

B. The Claimant Falls Under the Application of the NAFTA (Jurisdiction *Ratione Temporis*)

1. The Claimant has met all temporal requirements set out in the NAFTA and the USMCA

379. The NAFTA provides a number of temporal requirements and conditions precedent to the submission of a claim to arbitration. These have all been satisfied by the Claimant.

380. First, the Claimant has complied with Article 1119 of the NAFTA, which requires that the disputing investor "deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted". The Claimant submitted its Notice of Intent to submit a claim to arbitration to Canada on 19 October 2022, *i.e.*, 121 days before the Request for Arbitration was filed (on 17 February 2023).[585] Moreover, the Notice of Intent contained all information required by NAFTA Article 1119.[586]

---

585 Notice of Intent to Submit a Claim to Arbitration under Chapter Eleven of the North American Free Trade Agreement, 19 October 2022, **Exh. C-0001.** *See also* Letter from Julie Boisvert (Global Affairs Canada) to Claimant's counsel, 7 November 2022, **Exh. C-0021** ("This letter confirms receipt by the Government of Canada, on October 19 … 2022, of a Notice of Intent to Submit a Claim to Arbitration under … Section B of Chapter Eleven of the North American Free Trade Agreement … served on behalf of Ruby River Capital LLC").

586 *See* Notice of Intent to Submit a Claim to Arbitration under Chapter Eleven of the North American Free Trade Agreement, 19 October 2022, **Exh. C-0001,** which set out out: (a) the name and address of the disputing investor andthe name and address of the enterprise on whose behalf the claim is being brought (Notice of Intent, paras. 12-15); (b) the provisions of the NAFTA alleged to have been breached (Notice of Intent, paras. 18 and 129-141); (c) the issues and the factual basis for the claim (Notice of Intent, paras. 19-128); and (d) the relief sought and the approximate amount of damages (paras. 142-145).

381. Second, in line with Article 1118 of the NAFTA, the Claimant held formal consultations with the Respondent on 16 January 2023 regarding the loss and damages Symbio has incurred as a result of Québec and Canada's measures in breach of NAFTA Chapter Eleven.[587] Since these consultations failed to result in a mutually agreeable resolution of the claim, the Claimant filed on Symbio's behalf its Request for Arbitration on 17 February 2023, to ensure that the Respondent compensates in full all damages, costs and other related losses that Symbio has incurred as a result of Québec and Canada's measures.[588]

382. Third, the Claimant has satisfied Article 1117(2) of the NAFTA, which states that a disputing investor may not make a claim on behalf of an enterprise "if more than three years have elapsed from the date on which the enterprise first acquired … knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage", and Article 1120(1), which states that a disputing investor may submit a claim to arbitration "provided that six months have elapsed since the events giving rise to a claim." The facts that form the basis of the claims set out in the present Memorial include breaches that were continuing in the first half of 2020, as well as specific measures that were adopted adopted in March 2020 so as improperly to target the Claimant, Symbio and their investments in Canada. The measures continued through to 21 July 2021 and 7 February 2022. As a result, more than six months and less than three years have elapsed since the date when Symbio first acquired knowledge of the breach and knowledge that Symbio had incurred loss or damages.

383. As described above, in addition to the requirement set out in the NAFTA, Annex 14-C of the USMCA provides two temporal limitations with respect to the USMCA Parties' consent to submission of a legacy investment claim to arbitration, both of which are met here.

384. First, paragraph 1 provides that a Party's consent to claims are limited to "legacy investments". Paragraph 6 of Annex 14-C defines "legacy investment" as "an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement". [589] As explained below, the Claimant holds a "legacy investment" for the purposes of the USMCA, in that the investment predates the termination of the NAFTA; it was made between the date of entry into force of the NAFTA (on 1 January 1994) and prior to the date of termination of the NAFTA (on 1 July 2020); and existed on the date of entry into force of the USMCA. It follows that the Claimant's investments meet the temporal requirements of a NAFTA "legacy investment" envisaged in Annex 14-C.

385. Second, paragraph 3 of Annex 14-C provides that the USMCA Parties' consent to arbitration expires at the end of the three-year transition period. The USMCA entered into force and superseded the NAFTA (subject to the "without prejudice" clause in the Protocol) on 1 July 2020. As a result, the three-year period envisaged in paragraph 3 of Annex 14-C expired on 1 July 2023. The Claimant filed its Notice of Intent on 19 October 2022 and its Request for

---

587 Request for Arbitration, para. 11.

588 Request for Arbitration, para. 1.

589 United States-Mexico-Canada Agreement, Annex 14-C, Section 6(a)**, Exh. CL-0003**.

Arbitration on 17 February 2023, *i.e*. within the three-year transitional period envisaged in paragraph 3, Annex 14-C.

386. It follows that the Claimant instituted these proceedings within the temporal limits of consent envisaged in the NAFTA and Annex 14-C of the USMCA and satisfies the requirements for the Tribunal's jurisdiction *ratione temporis*.

2. For the avoidance of doubt, the temporal requirements of the USCMA do not affect the substantive protections afforded to the Claimant

387. As described in the foregoing sections, the plain text of Annex 14-C of the USMCA establishes that the USMCA Parties agreed to allow claims alleging a breach of NAFTA Chapter Eleven in respect of legacy investments during the transition period of 1 July 2020 to 1 July 2023.

388. Once the requirements under Annex 14-C are met (being (1) a claim with respect to a legacy investment, (2) alleging a breach of Section A obligations under NAFTA Chapter Eleven, (3) submitted in accordance with Section B of NAFTA Chapter Eleven and Article 25 of the ICSID Convention, and (4) brought during the three-year transition period), then the relevant protections set out in NAFTA Chapter Eleven apply "without prejudice" to the NAFTA's termination.[590]

389. The Claimant has met all of these requirements, as discussed in the foregoing sections. Accordingly, Section A of NAFTA Chapter Eleven – the law specifically identified in paragraph 1 of Annex 14-C as applicable to a claim brought during the transition period – provided protection to the Claimant's investment throughout the period of the Respondent's impugned actions. The separate temporal requirement to submit a dispute within the three-year transition window does not affect the substantive protections afforded to the Claimant under the NAFTA.

390. This is confirmed in the relevant footnotes of Annex 14-C, which form an integral part of the text of the Agreement.[591] As excerpted above, footnote 20 to paragraph 1 of Annex 14-C clarifies that the relevant provisions set out in, *inter alia*, Chapter Eleven of the NAFTA "apply with respect to such a claim". The "claim" in question includes one arising during the transitional three-year period envisaged in paragraph 1 of Annex 14-C and alleging a breach of the obligations set out in Section A of NAFTA Chapter 11. It is therefore clear that the relevant provisions of NAFTA Chapter Eleven continue to "apply" to claims brought within the three-year transitional period envisaged in Annex 14-C.

391. This interpretation is further confirmed in footnote 21 of Annex 14-C. Under the terms of the USMCA, Canada did not consent as an "Annex Party" to the submission of disputes arising under Chapter 14 of the USMCA to arbitration. Only Mexico and the United States

590 Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (30 November 2018), **Exh. CL-0002.**

591 USMCA, Article 34.2: "The annexes, appendices, and footnotes to this Agreement constitute an integral part of this Agreement." **CL-0006.**

consented to the arbitration of specific classes of disputes to arbitration, as set out in Annex 14-D, Articles 14.D.3 and 14.D.4. As a result, Mexican legacy investors are "eligible" to bring claims against the United States (and U.S. legacy investors are "eligible" bring claims against Mexico) in respect of legacy investments under both Annex 14-C and Annex 14-D. For the avoidance of doubt, footnote 21 of Annex 14-C provides that "Mexico and the United States do not consent under paragraph 1 with respect to an investor of the other Party that is eligible to submit claims to arbitration under paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts)."

392. Footnote 21 confirms that, with the exception of claims that may be brought under Annex 14-E (in relation to covered government contracts), claims arising during the transitional three-year period following the entry into force of the USMCA are "eligible" for submission to arbitration under both Annex 14-C and Annex 14-D. Given that the USMCA investment-related provisions began to apply only *after* the USMCA entered into force, the only logical and necessary implication of footnote 21 is that the substantive provisions of NAFTA Chapter Eleven applied concurrently with those of USMCA Chapter 14 until 1 July 2023 to claims arising with respect to a legacy investment, and that a legacy investor was eligible for protection under both regimes.

393. The plain language of Annex 14-C paragraph 1 and its footnotes therefore confirms that Section A of NAFTA Chapter Eleven applies to provide protection to the Claimant for purposes of this dispute. The fact that the Respondent took a series of measures occurring both before and within the three-year period set out in paragraph 3 of Annex 14-C therefore does not affect the scope of this protection.

C. The Claimant is a Covered Investor under the NAFTA and the ICSID Convention (Jurisdiction *Ratione Personae*)

394. The Claimant also satisfies the requirements of jurisdiction *ratione personae* under the NAFTA, the USMCA, and Article 25 of the ICSID Convention.

395. Paragraph 6(b) of Annex 14-C of the USMCA clarifies that the term "investor" has "the meaning[] accorded in Chapter 11 (Investment) of NAFTA 1994". Under the NAFTA, an "investor of a Party" is defined in Article 1139 as "an enterprise of such Party that seeks to make, is making or has made an investment", whereas an "enterprise of a Party" means "an enterprise constituted or organized under the law of a Party".

396. Likewise, Article 25(1) of the ICSID Convention requires that the non-State party to the dispute be "a national of another Contracting State" to the Convention. Article 25(2)(b) defines a "national of another Contracting State" to include "any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to … arbitration"

397. Ruby River is, and has been at all times, a U.S. corporation established under the laws of Delaware.[592] It was incorporated on 29 April 2014 with its principal registered place of

[592] Ruby River Capital LLC, Certificate of Good Standing (State of Delaware), 13 February 2023, **Exh. C-0002**.

business at 651 N. Broad Street, Suite 201, Middletown, DE 19709, United States of America.[593] As explained in the Request for Arbitration, Ruby River is owned and controlled by Freestone International LLC (**Freestone**)[594] and Breyer Capital L.L.C. (**Breyer Capital**),[595] both of which are U.S. corporations that together own 100% of Ruby River. Therefore, Ruby River qualifies as an "enterprise" of the United States under the definitions set out in NAFTA Article 1139 and Article 25(1) of the ICSID Convention.

398. Moreover, and as explained in greater detail below, the Claimant has made investments in the Respondent's territory. Therefore, it qualifies under the definition of "investor of a Party" within the meaning of Article 1139 of the NAFTA. It therefore satisfies the requirements for the Tribunal's jurisdiction *ratione personae*.

D. The Claimant Has Made Qualifying Investments under the NAFTA, the USMCA and the ICSID Convention (Jurisdiction *Ratione Materiae*)

399. The Tribunal also has jurisdiction *ratione materiae* because the Claimant has made qualified investments under the relevant definitions of the NAFTA and the USMCA, as well as Article 25 of the ICSID Convention, as explained below.

1. The Claimant Has Made Qualifying Investments Under the NAFTA and Annex 14-C of the USMCA

400. Paragraph 6(b) of Annex 14-C of the USMCA provides that the term "investment" has "the meaning[] accorded in Chapter 11 (Investment) of NAFTA 1994".

401. Article 1139 of the NAFTA requires that foreign investors have "made an investment" in the other Party's territory, while Article 1101 is clear that the protections set out in NAFTA Chapter Eleven relate to, *inter alia*, "investments of investors of another Party."

402. Article 1139 of the NAFTA defines an "investment" as follows:

> (a) an enterprise;
>
> (b) an equity security of an enterprise;
>
> (c) a debt security of an enterprise
>
> (i) where the enterprise is an affiliate of the investor, or
>
> (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise;

---

593 Ruby River Capital LLC, Certified Copy of Certificate of Formation (State of Delaware), 26 September 2022, **Exh. C-0003.**

594 Freestone International LLC, Certificate of Status (State of California), 6 February 2023, **Exh. C-0004.**

595 Breyer Capital L.L.C., Certificate of Good Standing (State of Delaware), 6 February 2023, **Exh. C-0005.**

(d) a loan to an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

403. Based on this definition, the Claimant made several investments in the territory of Canada.

404. First, the Claimant owns and controls a series of "enterprises" that qualify as "investments" within the meaning of NAFTA Article 1139(a).[596] As stated above, Ruby River majority owns and controls Symbio, a Québec limited partnership organized under the laws of Canada. Ruby River holds a majority and controlling interest in Symbio through its 100%-owned subsidiary 9311-0385 Québec Inc., a company incorporated under the laws of Québec, Canada. Ruby River is also the sole shareholder of Symbio GP (a company incorporated under the laws of Québec, Canada), which is the designated General Partner under Symbio's Limited Partnership Agreement and has the exclusive power to direct Symbio's corporate affairs.

405. Through these corporate entities, Ruby River also holds interests in Symbio entitling it to the income or profits of these enterprises within the meaning of NAFTA Article 1139*(e)*.[597]

---

596 The term "enterprise" is defined by NAFTA Article 1139, which refers back to NAFTA Article 201 that contains the definition applicable to the whole of the NAFTA as follows: "enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association…" *See also S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, 13 November 2000, **CL-0007**, footnote 40: "Article 1139 refers incorporates the definition in article 201 which says that enterprise means any entity constituted or organized under applicable law…"

597 North American Free Trade Agreement (1994), Chapter Eleven, Article 1139, **Exh. CL-0001** (definition of "investment", item *(e)*).

406. Through Symbio, the Claimant also holds investments in GNL Québec Inc. and Gazoduq Inc., the corporate vehicles specifically established in Québec in order to pursue the GNLQ and Gazoduq Projects. These entities are also "enterprises" within the meaning of NAFTA Articles 101 and qualify as "investments" for the purposes of Article 1139*(a)*.[598]

407. Second, the Claimant also holds "interests arising from the commitment of capital or other resources" to business activities in the territory of Canada within the meaning of NAFTA Article 1139*(h)*.[599] Over the course of its preparatory work on the GNLQ and Gazoduq Projects, Symbio invested a significant amount of time, energy, effort and resources to the preparatory phase of the Projects for their technical/engineering planning as well as the preparation of their legal, financial, commercial, environmental and social aspects.

408. To that end, Symbio regularly called upon its stakeholders to invest further sums in order to finance ongoing up-front costs. Over the course of four rounds of financing, Ruby River made considerable capital investments into Symbio alongside other Symbio limited partners.[600] As of 14 July 2021, the total amount raised by Symbio for the purposes of investing in both GNLQ and Gazoduq amounted to US$ 93,631,000 in equity investments from different limited partners[601] as well as a contribution in kind which was valued at US$ 46,216,667.[602] Moreover, Symbio raised an additional amount of US$ 31,071,100 by issuing convertible notes to several of its limited partners.[603] Taken together, Symbio raised capital at an amount of US $170,918,767 from 2014 to 2021.

409. By the end of 2020, Symbio had made capital contributions to wholly-owned subsidiaries GNLQ and Gazoduq that together amounted to just under US$ 114 million. The total capital

---

598 *See id.* (definition of "investment", item *(a)*).

599 *See id.* **(**definition of "investment", item (*h*)).

600 Apart from Ruby River Capital LLC, Symbio's remaining limited partners include a range of other entities representing high net worth U.S. individuals, investment offices and funds in the United States and Canada, as well as select alternative investment funds in China. *See* Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), **Exh. C-0011.**

601 Symbio, Schedule of Partners and Pro Rata Share as of 31 May 2021, certified and confirmed on 6 February 2023 (updated version of original Exhibit D to the Symbio LPA), p. 8, **Exh. C-0011.** *See also* "Symbio Infrastructure LP - Fully Diluted Cap Table by Round" (21 October 2021), **Exh. C-0095**.

602 Prior to the incorporation of Ruby River and GNLQ, Ruby River's Canadian holding company (RR Québec Holdco) and Freestone owned 100% of the assets and intellectual property into the GNLQ Project, including [redacted], as well as early studies that were completed for engineering, consultation, environmental impacts, market analyses, etc. When Symbio was incorporated on 10 October 2014, such assets, intellectual property and value were all transferred to Symbio in consideration of Ruby River's holding company receiving the in-kind value of US$ 46,216,667.

603 "Symbio Infrastructure LP - Fully Diluted Cap Table by Round" (21 October 2021), **Exh. C-0095**, "CN Overview".

contributions from Symbio to GNLQ between 2014 and 2022 amount to US$ 93,642,890.[604] These contributions may be broken down per year as follows:

Capital contributions to GNL Québec Inc.

Year	Can$	US$
2014	3,478,171	3,250,000[605]
2015	24,537,401	20,300,000[606]
2016	7,754,315	6,110,000[607]
2017	43,831,478	34,070,000[608]
2018	(No capital contribution to GNLQ[609])	
2019	N/A	9,800,000[610]

604 Financial Statements of LNG Québec Limited Partnership, (31 December 2020), pp. 4, 7 **Exh. C-00328**; Consolidated Financial Statements of GNL Québec Inc., (31 December 2020) (Unaudited), pp. 4, 7, **Exh. C-00329**.

605 On 10 October 2014, Symbio Infrastructure Limited Partnership (formerly known as "LNG Québec Limited Partnership") entered in an asset transfer agreement with 9311-0385 Québec Inc., under which it received all of the outstanding shares of GNL Québec Inc. in exchange for the issuance of 3,250,000 Series A-1 units, 46,216,667 Series A-2 units and 49,467 Series B units. The General Partner, the Limited Partner and the Partnership are under common control and, therefore, the exchange was recorded at the carrying value of the investment in the Limited Partner's books for $3,250,000. *See* Financial Statements of LNG Québec Limited Partnership, (31 December 2014), pp. 2-3, **Exh. C-00330**; Financial Statements of GNL Québec Inc., (31 December 2014), pp. 3-4, **Exh. C-00331**. *See also* Financial Statements of GNL Québec Limited Partnership, (31 December 2015), p. 3, **Exh. C-00332**.

606 In 2015, 19,900,000 Series A-1 Units, 533,333 Series AA-1 Units, and 20,433 Series B Units of Symbio were issued without consideration to follow, based on inexistent publication into the securities register at that time, the cash movements that were transferred directly from partners to GNL Québec Inc., the subsidiary. However, those unit issuances should have been considered with a consideration of an investment in this subsidiary. Accordingly, the initial figure of $0 was restated with a figure of $24,537,401 for that year: Financial Statements of GNL Québec Limited Partnership, (31 December 2016), p. 3. Note 2, **Exh. C-00334**; Financial Statements of GNL Québec Limited Partnership, (31 December 2015), p. 6, Note 3, **Exh. C-00333**.

607 In 2016, additional capital contributions of $6,110,000 were made as part of the expansion financing of LNG Québec Limited Partnership: Financial Statements of GNL Québec Inc., (31 December 2016), pp. 8 (Note 5) **Exh. C-00334**; Financial Statements of GNL Québec Limited Partnership, (31 December 2016), pp. 4-5, **Exh. C-00334**.

608 On October 27, 2017, LNG Québec Limited Partnership issued 11,898,073 Series AAA-1 units upon the third-round financing's closing as part of the consideration for capital contributions of $34,070,000. The Partnership invested 100% of the proceeds of the expansion financing and third–round financing in GNL Québec Inc. *See* Financial Statements of GNL Québec Inc., (31 December 2017), pp. 4, 8, **Exh. C-00335**; Non-consolidated Balance Sheet of LNG Québec Limited Partnership, (31 December 2017), pp. 3-4, **Exh. C-00336**.

609 According to the Non-consolidated Financial Statements of LNG Québec Limited Partnership, (31 December 2018), pp. 5, 8, , LNG Québec Limited Partnership invested 100% of the proceeds of the expansion financing of 2018 (US$ 7,125,000) in Gazoduq Inc. No 2018 capital contribution was made into LNG Québec Inc. Accounting figures also changed from being recorded in Can$ to US$: "[t]he Canadian dollar served as the Company's functional currency. The Company modified its presentation currency for 2018 from the Canadian dollar to the United States dollar. This was considered a change in accounting policy and, accordingly, was applied in a retrospective manner" (p. 6).

610 In 2019, capital contributions amounting to $9,800,000 were injected by LNG Québec Limited Partnership, resulting in a corresponding increase of the issued and paid-up share capital account for the issued and outstanding common shares. *See* Consolidated Financial Statements of GNL Québec Inc., (31 December 2019), pp. 4-5, 9 **Exh. C-00338**; Non-consolidated Financial Statements of LNG Québec Limited Partnership, (31 December 2019), pp. 4-5 **Exh. C-00339**.

2020	N/A	11,500,000[611]
2021	N/A	5,254,890
2022	N/A	3,358,000
	Total	**93,642,890**

410. Symbio also made capital contributions to Gazoduq between 2018 and 2020 totalling US$31,231,457, which may be broken down per year as follows:

Capital contributions to Gazoduq Inc.

Year	Can$	US$
2018	9,469,177	7,124,901[612]
2019	20,663,940	15,700,000[613]
2020	8,527,070	6,100,000[614]
2021	N/A	2,306,556
	Total	**31,231,457**

411. Therefore, total capital contributions to both GNLQ and Gazoduq by Symbio between 2014 and 2022 amounted to **US$ 124,874,347**.

412. Relying on a continuing stream of positive comments made by the Government of Québec and the continued encouragement of senior officials to continue work on the Projects up until the July 2021 rejection, Symbio made additional capital contributions of no less than US$ 5.2 million to GNLQ and US$ 2.3 million to Gazoduq in 2021. This brought the total cash capital contributions made by Symbio to both GNLQ and Gazoduq up to 31 December 2021 to US$ 121.5 million.[615]

413. GNLQ and Symbio expended most of this capital pursuing the two Projects in a professional and diligent manner. According to consolidated financial statements from 2014 to 2021, by the end of 2021 GNLQ Inc. (US$ 77,903,558), GNLQ Development Inc. and Gazoduq (US$

611 Consolidated financial statements of GNL Québec Inc. (Unaudited), 31 December, 2020, p. 5 **Exh. C-0328**; Non-consolidated Financial Statements of LNG Quebec Limited Partnership (now named "Symbio Infrastructure Limited Partnership since January 22, 2021), 31 December 2020, pp. 4-5, 7 **Exh. C-0329**.

612 Financial Statements of Gazoduq Inc., (31 December 2018), pp. 4-5, 9, **Exh. C-00340**; Non-consolidated Financial Statements of LNG Québec Limited Partnership, (31 December 2018), pp. 5, 8 **Exh. C-00337**.

613 Financial Statements of Gazoduq Inc., (31 December 2019), p. 9 **Exh. C-00341**. *See also* Non-consolidated Financial Statements of LNG Québec Limited Partnership, (31 December 2019), pp. 4-5, **Exh. C-00339**.

614 Financial Statements of Gazoduq Inc. (Unaudited), (31 December 2020), p. 7 **Exh. C-00342**. Non-consolidated Financial Statements of LNG Québec Limited Partnership (now named "Symbio Infrastructure Limited Partnership since January 22, 2021), (Unaudited), (31 December 2020), pp. 4-5, 7, **Exh. C-00329**.

615 Financial Statements of Gazoduq Inc. (Unaudited), (31 December 2021), **Exh. C-00343**, Consolidated Financial Statements of GNL Québec Inc., (31 December 2021) **Exh. C-00344**.

28,988,845) had made expenditures which together amounted to US$ 121,434,529 for capital expenses, capital assets and intangible assets.[616]

414. GNLQ's capital expenses in Canada in connection with the GNLQ Project included: professional fees to generate feasibility studies, engineering and design studies, consultation reports, environmental reports; impacts and market analysis reports; salaries and benefits; legal fees for counsel work; project promotion and travel expenses; corporate and office expenses; communications and public and external relations (including consultation efforts with local communities, First Nations and a wide array of stakeholders), engineering, LNG marketing, gas supply, financing, and pipeline-related expenses.[617] In particular, GNLQ paid significant amounts of money [redacted],[618] and in order to obtain the required permits (including Canada's LNG export license process[619] and the federal and provincial environmental approval processes).

415. GNLQ also invested in capital assets and intangible assets in Canada, including computer software and hardware, office furniture, leasehold improvements, plant power supply, and preliminary front end engineering design (including multiple technical studies with international and local engineering experts, such as geotechnical studies, liquefaction process design, and multi-year engineering support of the regulatory approval processes). It also invested in the production of a local socio-economic impact assessment for the purposes of regulatory approval.[620]

416. Similarly, Gazoduq's expenditures included those aimed at securing Canadian regulatory approvals and permits including consultation efforts with local communities and First Nations, engineering (e.g., Canadian-sourced front-end engineering design, detailed route

---

616 *See* Combined Financials for GNLQ D., Gazoduq and GNLQ, which Expenditure by Entity and Year, **Exh. C-00345**. *See also* summary of actual expenditures incurred by GNLQ and Gazoduq, which was populated from prior financial statements (i.e. 2014-2020) at "Detailed Project Expenditures from Financial Statements (Confidential)", (January 2022), **Exh. C-00346**.

617 "Detailed Project Expenditures from Financial Statements (Confidential)", (January 2022), **Exh. C-00346**.

618 [redacted]

619 National Energy Board, Letter Decision on the Application for a Licence to Export Gas as Liquefied Natural Gas (27 August 2015), **Exh. C-00109**.

620 "Detailed Project Expenditures from Financial Statements (Confidential)", (January 2022), **Exh. C-00346**.

assessments, river crossing assessments, geophysical studies, electrification studies), employee salaries and benefits; computer hardware and office furniture; and Pre-FEED.[621]

417. These assets qualify as "real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes", as they were acquired for the purposes of pursuing the Claimant's LNG plant and gas pipeline through the relevant regulatory processes.

418. As explained below**,** the Claimant's contributions to the business activities of GNLQ and Gazoduq gave rise to economic interests with significant commercial value in the territory of Canada. Through careful commercial development and strategic marketing activities, and despite the fact that the Project had not yet reached FID, the Claimant entered into commercial agreements with third parties such as gas producers and suppliers in Western Canada, LNG off-takers and shipping companies that generated commercial value across GNLQ/Gazoduq's value chain. These efforts led to the creation of goodwill and reasonably-to-be-expected profits in the commercial operation phase of the Projects, [redacted], "a company established in 1998 under an act passed by the National Assembly of Québec to favour investment in Québec by Québec-based and international companies".

419. This value was irretrievably lost as a result of the arbitrary, discriminatory and expropriatory conduct of the Respondent, as explained below.

2. The Claimant Holds "Investments" Under Article 25 of the ICSID Convention

420. Finally, the Claimant also fulfil the requirement of an "investment" within the meaning of Article 25(1) of the ICSID Convention, which states:

> The jurisdiction of the Centre shall extend to any legal dispute *arising directly out of an investment*, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre… (Emphasis added)

421. While the term "investment" is not defined in the Convention,[622] it is widely accepted that jurisdiction will be presumed to exist if a claimant has an "investment" within the meaning of that term under the applicable investment treaty or other legal instrument under which a

621 "Detailed Project Expenditures from Financial Statements (Confidential)", (January 2022), **Exh. C-00346**.

622 Report of the Executive Directors on The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, para. 27, **CL-0008** ("No attempt was made to define the term 'investment' given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre (Article 25(4)).").

claim is brought.[623] As outlined above, the requirements of the NAFTA and the USMCA have been fulfilled.

422. Furthermore, the Claimant's economic activity and contributions in Canada equally fulfil the commonly-accepted criteria for an "investment" under the ICSID Convention, notably (1) contribution of money or assets; (2) of a certain duration; (3) an element of risk; and (4) a contribution to the economic development of the host State.[624]

423. *First*, ICSID tribunals have interpreted the criterion of contribution broadly, to encompass not only payments of money, but also other kinds of non-pecuniary contributions of value, such as "materials, works, or services".[625] As outlined above, between 2014 and 2022 the Claimant committed considerable capital and made in-kind contributions in pursuance of the GNLQ and Gazoduq Projects in the territory of the Respondent. These capital expenditures and other resources qualify as contributions making part of its "investment".

424. *Second*, ICSID tribunals have recognized that "[duration] is a very flexible term … [and] could be anything from a couple of months to many years."[626] The Claimant falls into the latter category, having spent nearly a decade investing in Québec, Canada, from 2014 to 2022. The "duration" criterion is amply satisfied in this case.

425. *Third*, ICSID tribunals have been clear that an element of risk is inherent in any long-term investment.[627] The Claimant exposed itself to financial and market risk in order to develop

---

623 *See, e.g.*, *National Grid P.L.C. v. Argentina Republic*, UNCITRAL, Award (3 November 2008), para. 83, **CL-0009**; *Patrick H. Mitchell v. The Democratic Republic of the Congo*, ICSID Case No. ARB/99/7, Excerpts of Award (9 February 2004), paras. 43-44, **CL-00010**.

624 *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco [I]*, ICSID Case No. ARB/00/4, ICSID Case No. ARB/00/4, Decision on Jurisdiction (23 July 2001), para. 52, **CL-00011.** See also *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction (16 June 2006), paras. 90-106, **CL-00012**; *Joy Mining Machinery Limited v. The Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction (6 August 2004), para. 53, **CL-00013;** *Mr. Saba Fakes v. Republic of Turkey*, ICSID Case No. ARB/07/20, Award (14 July 2010), paras. 95-114, **CL-00014.**

625 *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction (12 July 2006), para. 73(i), **CL-00015** (original in French: "S'agissant de l'apport: II ne peut y avoir d' «investissement» que si une partie fait dans le pays concerné des apports ayant une valeur économique. Sans doute peut-il s'agir au premier chef d'engagements financiers, mais ce serait privilégier une interprétation par trop restrictive que de ne pas admettre d'autres types d'engagements. Ces apports peuvent donc consister en prêts, en matériaux, en travaux, en services, pour autant qu'ils aient une valeur économique. En d'autres termes, il faut que le contractant ait engagé des dépenses, sous quelque forme que ce soit, afin de poursuivre un objectif économique." (Translation: "[T]here can be no investment unless a portion of the contribution is made in the country concerned and brings with it economic value. This would presumably involve financial commitments, in the first place, but it would be too restrictive an interpretation not to admit other contributions. These contributions could, then, consist of loans, materials, works, or services, provided they have an economic value.")

626 *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award (31 October 2012), para. 303, **CL-00016.**

627 *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco [I]*, ICSID Case No. ARB/00/4, ICSID Case No. ARB/00/4, Decision on Jurisdiction (23 July 2001), para. 56, **CL-00011** ("A construction that stretches out over many years, for which the total cost cannot be established with certainty in advance, creates an obvious risk for the Contractor"); *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction (14 November 2005), para. 136, CL-00017 ("Besides the inherent risk in long-term contracts, the Tribunal considers that the very existence of a defect liability period of one year and of a maintenance period of four years against

GNLQ and Gazoduq as a profitable LNG enterprise in Québec over the long-term, while seeking to develop business and turn a profit.

426. *Fourth*, and finally, while the contribution to the host State's economic development is arguably implicit in the criteria of contribution, duration and risk, and therefore need not be established separately,[628] the Claimant and Symbio made substantial contributions to Canada's economic and social development.

427. Together, the investments in GNLQ and Gazoduq raised a total of no less than US$170,918,767 which directly benefitted the Québec economy. Symbio pursued the GNLQ and Gazoduq Projects with a high degree of professionalism and care, as recognized by senior representatives of the Québec Government. Between 2014 and 2021, GNLQ and Gazoduq together employed more than 55 individuals and retained the services of more than a dozen consultants in Canada, as well as a significant number of contractor personnel, at times exceeding 100 persons dedicated full time to the Projects.

428. But for the Respondent's wrongful actions, GNLQ and Gazoduq would have produced major socio-economic benefits for Québec and Canada. According to a study produced by Malette on the socio-economic repercussions of the Énergie Saguenay Project:

> Les investissements totaux prévus pour GNL Québec sont de 7,849 G$ pour la construction et de 3,199 G$ pour l'exploitation annuelle de l'usine à pleine capacité. Sur une période de 25 ans d'opération, le projet générerait des dépenses d'exploitation de 79,98 G$. Ces investissements créeraient des retombées économiques importantes pour le Québec et le Canada.[629]

429. These economic benefits included the creation of 18,488 direct employments and 10,632 indirect employments during the four-year construction phase, as well as the creation of 8,000 direct employments and 153,400 indirect employment positions during the 25-year exploitation phase of the Projects.[630] The Study also estimated other beneficial financial impacts, including gross mixed revenue, indirect taxes, governmental revenue, para-fiscal benefits and salaries, as well as other non-economic benefits, including youth retention, the integration of indigenous people, profile-raising for the Province of Québec, the creation of

---

payment, creates an obvious risk for Bayindir."); *Saipem S.p.A. v. The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Decision on Jurisdiction and Recommendation on Provisional Measures (21 March 2007), para. 109, **CL-00018** ("In the present case, the undisputed stopping of the works which took place… and the necessity to renegotiate the completion date constitute examples of inherent risks in long-term contracts").

628 *See, e.g., Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case no. ARB/06/5, Award (15 April 2009), para. 85, **CL-00019** ("[T]he contribution of an international investment to the development of the host State is impossible to ascertain – the more so as there are highly diverging views on what constitutes "development." A less ambitious approach should therefore be adopted, centred on the contribution of an international investment to the economy of the host State, which is indeed normally inherent in the mere concept of investment as shaped by the elements of contribution/duration/risk, and should therefore in principle be presumed."

629 Malette, « Étude de Retombées Socio-Économiques — Rapport Final, GNL Québec, Projet Énergie Saguenay » (26 October 2018), p. 24, **Exh. C-0047.**

630 *Id.*, p. 26.

a new economic sector, environmental benefits through a world-class carbon-neutral LNG export facility and gas pipeline, community-building and nation-building potential, and the improvement of health and security infrastructures.[631]

430. To conclude, these elements amply satisfy the requirements of an "investment" set out in the USMCA, NAFTA Chapter Eleven and the ICSID Convention. Consequently, the Tribunal has jurisdiction *ratione materiae* over the Claimant's claims.

E. Conclusion with Respect to the Tribunal's Jurisdiction in this Dispute

431. Therefore, the conditions of jurisdiction *ratione voluntatis*, *ratione temporis*, *ratione personae*, and *ratione materiae* have all been met: Canada has consented to jurisdiction through the NAFTA and USMCA, which applies to the breaches by the Respondent of the investment protections set out therein; all temporal requirements and conditions precedent have been met; and the Claimants qualify as foreign investors with covered investments under the NAFTA, USMCA and the ICSID Convention. The Tribunal thus has jurisdiction to hear this dispute.

IV. CANADA IS LIABLE FOR BREACHES OF NAFTA CHAPTER ELEVEN

A. The Measures Amount to a Breach of NAFTA Articles 1102 and 1103

1. Canada violated NAFTA Articles 1102 and 1103

a. The national treatment and most-favored-nation treatment standards under NAFTA Articles 1102 and 1103

432. NAFTA Article 1102 requires each NAFTA Party to provide national treatment (**NT**) to investors of another Party and to their investments:

> **National Treatment**
>
> 1. Each Party shall accord to Investor of another Party treatment no less favorable than that it accords, in like circumstances, to its own Investor with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
>
> 2. Each Party shall accord to investments of Investor of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own Investor with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
>
> …

631 *Id.*, pp. 26-44.

433. NAFTA Article 1103 requires each NAFTA Party to provide most-favoured-nation (**MFN**) treatment to investors of another Party and their investments:

> **Most-Favored-Nation Treatment**
>
> 1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
>
> 2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

434. Together, the NT and MFN standards "ensure that the treatment accorded to a foreign investor of another contracting State is no less favourable than that accorded to a national of the host State or of a third State (as the case may be)."[632]

435. NAFTA Articles 1102 and 1103 call for the same analytical approach. NAFTA tribunals have held that "the requirement for MFN treatment tracks that of the [NT] requirement".[633] As observed by UNCTAD, NT and MFN provisions "share the same comparison requirement", the key difference being that the relevant comparators under NT are local investors or their investments of the host State, whereas those under MFN are investors of a non-NAFTA Party or their investments.[634] Otherwise, the considerations relevant to the interpretation and application of NAFTA Article 1102 apply by analogy to Article 1103.[635]

---

632 Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition) , Oxford International Arbitration Series (OUP 2017), p.336, **CL-00020.**

633 *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), para. 193, **CL-00021.** *See also* UNCTAD, Most-favoured nation treatment, UNCTAD Series on Issues in International Investment Agreements II, Doc. No. UNCTAD/DIAE/IA/2010/1, 23 January 2011, p. 23 ("MFN treatment operates in the same conditions as NT and it requires a comparison as well as the finding of more favourable treatment granted to investors of a given nationality as opposed to the investors covered by the basic treaty."), and p. 27 ("… [A]ssessing a possible violation of MFN treatment may be done by borrowing from findings of violation of NT. Indeed, both treatment provisions share the same comparison requirement (the only difference being that under NT the applicable comparator of the foreign investor/investment is a national investor/investment)". *See also* Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), p.344, **CL-00020**: the issues arising under the MFN standard "are the same, *mutatis mutandis*, as those arising under the [NT] standard".

634 United Nations Conference on Trade and Development (**UNCTAD**), Most-Favoured-Nation Treatment, UNCTAD Series on Issues in International Investment Agreements II, 2010, at p. 27, **CL-00022**.

635 The Claimant reserves the right to raise its claim on the basis of either NT or MFN in relation to any of the identified comparator projects below, depending on evidence regarding their respective ownership structures indicate either Canadian or non-Canadian ownership. The ultimate understanding of such ownership structures is immaterial to the validity of the

436. Accordingly, in the NAFTA context, an investor must prove essentially the same three elements in order to establish a violation of NAFTA Article 1102 (NT) or 1103 (MFN), namely:

a) First, that the NAFTA Party accorded to the investor or its investments *treatment* "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments";[636]

b) Secondly, that the investor or its investment was *in like circumstances* (i) with "local investors or investments",[637] or (ii) with investors of a "non-[NAFTA] party" or their investments;[638] and

c) Thirdly, that the NAFTA Party treated the investor or its investment *less favourably* than it treated the identified comparator(s), whether that be (i) local

---

Claimant's arguments under either NAFTA Article 1102 and 1103, and the Claimant relies on both provisions with respect to each identified comparator project.

636 *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (24 May 2007), para. 83(a), **CL-00023**. *See also Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 117, **CL-00025** ("First, it must be shown that the Respondent State has accorded to the foreign investor or its investment 'treatment ... with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition' of the relevant investments."); *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), para. 189, **CL-00021** ("A further requirement of Article 1102 is that the treatment must be 'with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments"); *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 717-718, **CL-00024**; and 7. Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), p.337, **CL-00020.**

637 *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (24 May 2007), para. 83(b), **CL-00023**. *See also Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 117 ("Secondly, the foreign investor or investments must be 'in like circumstances' to an investor or investment of the Respondent State ('the comparator'), **CL-00025;** *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 717-718, **CL-00024**; and 7. Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), p.337, **CL-00020**.

638 *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), para. 193, **CL-00021** ("… it must be demonstrated first that the Claimant, as an investor, is in "like circumstances" with the investor of another Party or of a non-Party, or that the Claimant's investment is in "like circumstances" with the investment of an investor of another Party or of a non-Party…", emphasis added).

investors or investments.[639] or (ii) investors of a non-NAFTA Party or their investments.[640]

437. The legal burden with respect to both NAFTA Articles 1102 and 1103 lies with the claimant.[641] However, as the *Bilcon* tribunal held with respect to NT (and which, by analogy, should also apply to MFN), the evidentiary burden shifts to the respondent State to raise a positive defence once a *prima facie* breach has been demonstrated:

> once a *prima facie* case is made out under [NAFTA Article 1102], the onus is on the host state to show that a measure is still sustainable within the terms of Article 1102. It is the host state that is in a position to identify and substantiate the case, in terms of its own laws, policies and circumstances, that an apparently discriminatory measure is in fact compliant with the "national treatment" norm set out in Article 1102.[642]

2. The NAFTA Party has accorded "treatment" to the investors or its investments

438. The first element to establish a breach of NT and MFN under NAFTA Articles 1102 and 1103 is that the investor or its investments was subject to "treatment" by the relevant NAFTA Party.[643]

---

639 *See Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 117 ("Lastly, the treatment must have been less favourable than that accorded to the comparator."), **CL-00025**; *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (24 May 2007), para. 83(c), **CL-00023**; and *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), para. 193 ("… it must be shown that the treatment received by Claimant was less favourable than the treatment received by the comparable investor or investment"), **CL-00021**; and *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 717-718, **CL-00024.** *See also* 7. Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.337 and 344, **CL-00020**.

640 *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), para. 193, **CL-00021;** *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 717-718., **CL-00024**.

641 *Mercer International Inc. v. Government of Canada*, ICSID Case No. ARB(AF)/12/3, Award (6 March 2018), para. 7.16, **CL-00026**. *See also United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (24 May 2007), para. 120, **CL-00023**; *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award (16 December 2002), para. 177, **CL-00027.** *See also* 7. Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), p.338, **CL-00020.**

642 *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), para. 723, **CL-00024**. See also *Mercer International Inc. v. Government of Canada*, ICSID Case No. ARB(AF)/12/3, Award (6 March 2018), para. 7.16 ("whilst the legal burden of proof rests always on the Claimant to prove its claims under NAFTA Articles 1102 and 1103, the question whether the evidential burden shifts to the Respondent remains relevant, including the question whether any positive defence put forward by the Respondent is established"), **CL-00026**.

643 Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.337, 344, **CL-00020**.

439. The treatment requirement under NAFTA Articles 1102 and 1103 "is a broad concept, comprising the aggregate of measures undertaken by the State that bear upon the investor's business activity."[644] In this regard, the *Merrill & Ring* tribunal held that such treatment "includes almost any conceivable measure that can be with respect to the beginning, development, management and end of an investor's business activity", and "is not different than *the aggregate of all the regulatory measures applied to that business*" (emphasis added).[645]

440. In other words, for the purposes of NT and MFN, the fact that and the manner in which an investor or its investments was subject to regulation by a NAFTA Party amounts to treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments".[646]

441. NAFTA tribunals have specifically found that an investor's project being subject to an environmental assessment process was "treatment" for the purposes of NAFTA Article 1102. In *Bilcon*, the claimants' proposal to operate a quarry and marine terminal in Nova Scotia "underwent a lengthy environmental assessment" under the Federal CEAA regime in force at the time, a regulatory process very much alike the Federal environmental assessment process that the GNLQ Project underwent.[647]

442. The *Bilcon* tribunal noted that "what is at issue is whether the Investor was treated less favorably for the purpose of an environmental assessment", and was persuaded that Canada in that instance had "accorded Bilcon or its investment 'treatment' during the environmental assessment" for the purposes of NAFTA Article 1102.[648] As such, undergoing a regulatory process such as an environmental assessment amounted to "treatment" for the purposes of finding an NT breach.

443. The same applies by analogy to the identically-worded treatment requirement under NAFTA Article 1103, given that such treatment may be "by any of the organs of government: whether by legislative measures; judicial decisions; or the conduct in fact of the executive."[649] Therefore, the fact and the manner in which an investor or its investments was subject to an environmental assessment process can also give rise to an MFN breach under the NAFTA.

---

644 Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.338 and 344, **CL-00020**.

645 *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award (31 March 2010), para. 79, **CL-00028**.

646 NAFTA Articles 1102 and 1103.

647 *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 5, 152-157, **CL-00024**. The claimant investors in *Bilcon* were subject to the version of the CEAA that was in force until 6 July 2012.

648 *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 694, 717-718, **CL-00024**.

649 Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.338 and 345, **CL-00020**.

a) The claimant and its investment were in "in like circumstances" as comparator investors and investments

444. The second element to establish a breach of NT and MFN per NAFTA Articles 1102 and 1103 is identifying comparator investors or investments "in like circumstances" as the claimant or its investments.[650]

445. As with "treatment", the concept of "like circumstances" is broad, and does not require the comparator investors or investments to be in identical circumstances as the claimant or its investments.[651] Tribunals have instead adopted a flexible approach that "varies according to the circumstances of the investment or investor and according to the treatment at issue."[652]. As put by the *Pope & Talbot* tribunal, "[b]y their very nature, 'circumstances' are context dependent and have no unalterable meaning across the spectrum of fact situations."[653]

446. In principle, a claimant need only identify a single suitable comparator.[654] Tribunals engaged in the "in like circumstances" inquiry should consider the most apt comparator investors or investments where possible, including "like" comparators in the absence of identical ones. As the *Methanex* tribunal explained, "it would be as perverse to ignore identical comparators if they were available and to use comparators that were less 'like', as it would be perverse to refuse to find and to apply less 'like' comparators when no identical comparators existed."[655]

447. In identifying comparator investors or investments, tribunals have been guided by three principal factors, namely, whether the putative comparators were: (i) subject to a comparable

---

650 Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.337, 344, **CL-00020**.

651 *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 129 ("Article 1102 requires that the investors (or investments) which are being compared are in *like* not *identical* circumstances"; original emphasis), **CL-00025**. *See also Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), para. 692 ("… the operative word in Article 1102 is 'similar', not 'identical'), **CL-00024**.

652 Bjorklund, Andrea K., 'National Treatment', in August Reinisch (ed.), Standards of Investment Protection (Oxford, 2008; online edn, Oxford Academic, 22 Mar. 2012), pp.38-39, **CL-00029**

653 *Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL, Award on the Merits of Phase 2 (10 April 2001), paras. 75, **CL-00030.**

654 Bjorklund, Andrea K., 'National Treatment', in August Reinisch (ed.), Standards of Investment Protection (Oxford, 2008; online edn, Oxford Academic, 22 Mar. 2012), pp.38-39, CL-00029. *See also* 7. Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.342 ("Once the relevant comparator has been established, it does not matter if the class is very small, provided clear preferential treatment for the local investor is established."), **CL-00020**.

655 *Methanex Corporation v. United States of America*, UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits (3 August 2005), Part IV, Ch.B, para. 17, **CL-00031**.

legal regime; (ii) operated in the same business or economic sector; and (iii) provided the same or competing products or services.[656]

Comparators subject to a comparable legal regime

448. In a NAFTA context, being subject to a comparable legal regime has played a determinative role on whether a comparator investor or its investment was "in like circumstances" as the claimant. As the tribunal stated in *Grand River*, "NAFTA tribunals have given significant weight to the legal regimes applicable to particular entities in assessing whether they are in 'like circumstances' under Articles 1102 or 1103".[657]

449. For instance, while the *Merrill & Ring* tribunal recognised that it was "necessary to understand ["in like circumstances"] in a broader sense that will allow for the comparison of other relevant elements", it qualified that for the purpose of an NT claim such comparison should calibrate for "investors which are subject to the same regulatory measures under the same jurisdictional authority".[658]

450. Conversely, where a claimant was subject to a legal regime of general or wide application, another investor and its investment could in principle qualify as a suitable comparator by mere reason of having undergone the same. The *Bilcon* tribunal made this very finding with respect to Canada's Federal CEAA environmental assessment regime:

> The federal Canada law in question, the CEAA, is one of very general application. It applies the 'likely significant adverse effects after mitigation' standard of assessment as a necessary component of environmental review across a wide range of modes and industries …
>
> The Investors argue that 'the NAFTA Tribunal should consider all enterprises affected by the environmental assessment regulatory process to be in like circumstances with Bilcon'. While that broad proposition might be correct,

---

656 *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Award, 12 January 2011, **CL-00032**; *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award (31 March 2010), **CL-00028**; *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), **CL-00024**; *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 November 2000), **CL-0007**; *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (24 May 2007), **CL-00023**; *Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL, Award on the Merits of Phase 2 (10 April 2001), **CL-00030**; *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), **CL-00025**. *See also* 7. Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.339, 345-347, **CL-00020**.

657 *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Award, 12 January 2011, para. 166, **CL-00032**.

658 *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award (31 March 2010), paras. 88-89, **CL-00028**.

> adopting it would commit this Tribunal to a more abstract and sweeping proposition than is necessary to decide this case …[659]

451. The text of NAFTA Articles 1102 and 1103 supports an approach which calibrates for the applicable legal or regulatory regime in order to identify the most suitable comparators.[660] As highlighted by Bjorklund:

> One subtlety that can help guide the like-circumstances analysis involves considering whether the appropriate comparison is between the like-circumstanced investments (or investors), or the like-circumstanced treatment … The US Model BIT, for example, provides: 'Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors […]'.
>
> The placement of the phrase 'in like circumstances' suggests modification of 'treatment', rather than 'investor' …

452. This is especially so where an investor and its investment being subject to the relevant regime constitutes the "treatment" element of an NT and/or MFN claim. Nevertheless, an "in like circumstances" inquiry for the purposes of NAFTA Article 1102 and 1103 "can and should take into account the regulatory context in addition to the relationship between the investments (or investors)".[661]

Comparators in the same business or economic sector

453. Operating and competing in the same business or economic sector as the claimant can be another indication of an appropriate comparator for an NT or MFN claim.[662] As stated by the *S.D. Myers* tribunal in the context of NAFTA Article 1102, "[t]he concept of 'like circumstances' invites an examination of whether a non-national investor complaining of less favourable treatment is in the same 'sector' as the national investor … the word "sector"

---

659 *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 694-695 (emphasis added; footnotes omitted), **CL-00024**. 20. The *Bilcon* NT claim ultimately prevailed on the basis of other projects that had undergone an environmental assessment and which were found to be comparable to the claimants' project in further respects (e.g., similar industry or sector; similar components): see para. 696.

660 *See Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Award, 12 January 2011, para. 167 ("The reasoning of these cases [i.e., *ADF*; *Pope & Talbot*; *Feldman*; *Methanex*; *UPS*] shows the identity of the legal regime(s) applicable to a claimant and its purported comparators to be a compelling factor in assessing whether like is indeed being compared to like for purposes of [NAFTA] Articles 1102 and 1103"), **CL-00032.**

661 Bjorklund, Andrea K., 'National Treatment', in August Reinisch (ed.), Standards of Investment Protection (Oxford, 2008; online edn, Oxford Academic, 22 Mar. 2012), p.42, **CL-00029.**

662 7. Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), pp.339, 345-347, **CL-00020**.

has a wide connotation that includes the concepts of 'economic sector' and 'business sector'".[663]

454. A tribunal may in this regard examine various aspects of a comparator's activities, including the economics of the services offered, the logistics and internal controls on those operations, and the customer base.[664] Nevertheless, investors or investments not of the same sector may be found to be "in like circumstances" for the purpose of NT and MFN.

455. This is exemplified by the *Bilcon* tribunal, which considered the Rabaska and Cacouna LNG projects to be comparable to the claimants' quarrying and marine terminal project for the purposes of NAFTA Article 1102. Crucially, while all three shared some similarities (for instance, the marine terminal element; divided community views),[665] the Rabaska and Cacouna LNG projects were not concerned with quarrying or mining, but with LNG. This reinforces the broadness of the "like circumstances" requirement.

456. As such, while consideration of the business or economic sector can be often a convenient "first step" for identifying comparators,[666] it is not on its own a reason to exclude a project from comparison under NAFTA Articles 1102 or (by analogy) 1103.

Comparators providing the same or competing products or services

457. The provision of the same or competing products or services as the claimant is a further potential indicator of an appropriate comparator for the purposes of NAFTA Articles 1102 and 1103. NAFTA tribunals have specifically found produces of both identical goods as well as directly competing goods to be "in like circumstances".

458. For example, in *Corn Products International*, the claimant's sweetener (*i.e.*, high fructose corn syrup) was "in direct competition" with a different sweetener produced by national companies (*i.e.*, cane sugar).[667] Similarly, *S.D. Myers* found that the claimant was "in 'like

---

663 *See S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 November 2000), paras. 245 and 250, **CL-0007**.

664 *See, e.g., United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (24 May 2007), paras. 101-104, **CL-00023**.

665 *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 706-713, **CL-00024**.

666 *See, e.g., Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL, Award on the Merits of Phase 2 (10 April 2001), paras. 78, **CL-00030**; *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 12, **CL-00025**.

667 *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 120, **CL-00025**.

circumstances' with Canadian operators … [and] was in a position to attract customers that might otherwise have gone to the Canadian operators".[668]

459. However, the notion of "like circumstances" is distinct from and broader than that of "like products" under the GATT and WTO law.[669] Similarly, competition between a claimant and another investor may be helpful, but is not essential, for the purpose of establishing "like circumstances".[670]

b) The Claimant was treated less favourably than its identified comparators in like circumstances

460. The third and final element to establish a breach of NT and MFN per NAFTA Articles 1102 and 1103 is demonstrating that the claimant was accorded a treatment less favorable than that which was accorded to comparable local investors or investments, or to comparable investors or investments of a non-NAFTA Party.[671]

461. NAFTA tribunals have held that the term "'no less favorable' means equivalent to, not better or worse than, the best treatment accorded to the comparator".[672] Such treatment must have produced a practical, adverse effect on the claimant,[673] but it need not to have suffered some "disproportionate disadvantage" as a result.[674]

462. The less favorable treatment meted out on the claimant may take the form of *de jure* or *de facto* discrimination: "[t]he former refers to measures that on their face treat entities differently, whereas the latter includes measures which are neutral on their face but which

---

668 *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 November 2000), para. 251, **CL-0007**.

669 *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), paras. 193-194, **CL-00021.**

670 Bjorklund, Andrea K., 'National Treatment', in August Reinisch (ed.), *Standards of Investment Protection* (Oxford, 2008; online edn, Oxford Academic, 22 Mar. 2012), p.39, **CL-00029**.

671 Treatment of Investors, in Campbell McLachlan, Laurence Shore, et al., International Investment Arbitration: Substantive Principles (Second Edition), Oxford International Arbitration Series (OUP 2017), **CL-00020**.

672 *Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL, Award on the Merits of Phase 2 (10 April 2001), para. 42, **CL-00030**. *See also Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States* (ICSID Case No. ARB(AF)/04/5), Award (21 November 2007), para. 205 ("Accordingly, Claimants and their investment are entitled to the best level of treatment available to any other domestic investor or investment operating in like circumstances…"), **CL-00033**.

673 *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 November 2000), paras. 252-254, **CL-0007**.

674 *Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL, Award on the Merits of Phase 2 (10 April 2001), paras. 71-72, **CL-00030**.

result in differential treatment."[675] While it is not in this regard necessary to prove an intention to discriminate, "where such an intention is shown, that is sufficient to satisfy [the element of less favorable treatment]".[676]

463. In this context, a claimant undergoing a harsher environmental assessment is by definition accorded less favourable treatment than a comparator receiving a more lenient version of the process, under the auspices of the same regulatory framework. As *Bilcon* found in the context of the claimants' NT claim (which can be analogised to an MFN claim):

> Canada argues that the outcomes of different reviews of projects … might be legitimately different based on the facts. The Tribunal agrees. Bilcon argues, however, that it is part of the analysis of 'treatment' whether a less favorable evaluative standard applied. The Tribunal again agrees … it can be a denial of national treatment to apply a harsher standard to the non-Canadian project in like circumstances.[677]

464. Similarly, *Bilcon* held that a claimant's project being subject to an unusual environmental assessment standard which was different to that typically accorded to otherwise comparable projects could per se lead a tribunal to conclude that less favourable treatment had been meted out.[678]

1. The Québec Government and Federal Government treated the GNLQ Project less favourably than the treatment they accorded to similar projects

465. The Québec and the Federal Governments' environmental assessment processes were marred by obvious double-standards, notably with regard to their consideration of GHG emissions and of shipping impacts on belugas, but also with regard to Québec's and Canada's failure to pursue a joint environmental assessment process.

---

675 *Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States* (ICSID Case No. ARB(AF)/04/5), Award (21 November 2007), para. 193, **CL-00033**. *See also Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 115, **CL-00025**.

676 *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility (15 January 2008), para. 138, **CL-00025**.

677 *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), para. 705, **CL-00024**.

678 *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 695 ("… many of the comparison cases brought forward by the Investors qualify as 'sufficiently' similar to sustain an Article 1102 comparison for the purposes of this case … The fact that assessments in these cases were carried out in accordance with the usual 'likely significant adverse effects after mitigation' analysis [under the CEAA regime] is sufficient to conclude that they received more favorable treatment than did the Investors in like circumstances."), **CL-00024**.

466. By reason of the GNLQ Project undergoing environmental assessments under the MELCC and CEAA 2012 regimes, it received treatment from Québec and Canada "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments". As explained in *Merrill & Ring*, treatment includes all regulatory measures applied to an investment. The *Bilcon* tribunal specifically found that an environmental assessment amounts to treatment of an investment.[679]

467. Therefore, both GNLQ and the projects in like circumstances referenced below have been accorded treatment for the purposes of both NAFTA Article 1102 or 1103 by reason of having undergone environmental assessments under Québec and/or Federal Canadian laws. For the purposes of the comparison to follow, GNLQ was treated less favourably than these identified comparator projects with regard to GHG emissions and shipping impacts on belugas, and also with regard to Québec's and Canada's failure to pursue a joint environmental assessment process.

468. On the issue of GHG emissions, both the Québec and Federal Governments' established position was that LNG advanced their policy goal of displacing other more polluting fossil fuels.[680] Despite this, in March 2021 the Québec Government marked a stark departure from this long-established policy position in the context of its evaluation of GNLQ, suddenly holding that Québec would only approve the Project if it met its eleventh-hour "core criteria" by demonstrating that this LNG project would significantly reduce global GHG emissions as well as promote the worldwide energy transition. Both the MELCC and the IAAC went on to challenge GNLQ's claims about its carbon-neutrality and the positive substitutive impacts of its LNG, on the unfair basis that GNLQ could not 'prove' them, without holding like projects to the same standard.

469. Québec's arbitrary shift of the goalposts with regard to its assessment of GNLQ (which, as Me Duchaine has noted, was in addition patently outside of the Québec Government's jurisdiction, as it must have known),[681] in turn tainted the Federal Government's own review process, given the IAAC's assessment of the Project cited and relied upon many of aspects of the MELCC process.[682]

---

679 See also *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award (31 March 2010), para. 79, **CL-00028**; and *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 March 2015), paras. 694, 717-718, **CL-00024**.

680 See para. 29.

681 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p.62 (**CER-1**) (« … l'importation dans l'ÉEIE de critères concernant les impacts mondiaux de réduction de GES constitue une entrave à la compétence du fédéral … ») and 92 (« … l'effet réel sur le bilan mondial des gaz à effet de serre, en plus d'être une compétence du fédéral … »).

682 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-37**, p.47.

470. On the issue of shipping impacts on belugas, both the Québec and Federal Governments' established position was to open and develop the Saguenay and St. Lawrence rivers for increased marine traffic, and to address any potential impact on belugas through mitigation measures. The Québec Government in conducting GNLQ's environmental review accordingly focussed, from the inception of the review process in 2015 to 2021, on the mitigation of any potential impacts on belugas (in particular, subaquatic noise).

471. Despite years of focus on mitigation, consistent with its past and current approach to the issue in this and other projects, in March 2021 - at the final phase of GNLQ's environmental review - the MELCC radically altered its position. MELCC suddenly took a zero-tolerance approach to *any* increase of maritime traffic on the Saguenay and St. Lawrence rivers associated with GNLQ, citing uncertainty regarding its impact on the subaquatic sound environment of belugas. MELCC expressly called for a moratorium on GNLQ-chartered ships passing through the Saguenay and St Lawrence for 7 months of the year, a condition it knew would make the Project both practically and economically unfeasible.

472. The Federal Government's approach proved to be similarly egregious. It subjected GNLQ's shipping mitigations measures (including to reduce subaquatic noise from shipping) to heavy critique, but failed to penalise similar projects proposed few to no measures at all. Taking its cue from MELCC (contrary to the established constitutional division of responsibly in respect of shipping and beluga impacts), and contrary to its own practice and policy, it ultimately abandoned any pretense of focussing on mitigation, and questioned GNLQ at the very end (in the final IAAC Report itself) whether it would be possible to avoid shipping altogether.[683]

473. In summary, while the Québec and Federal Governments relied on the above criteria to refuse GNLQ, they assessed and approved a number of comparator projects owned by proponents from Canada (including Québec) or from third countries, despite similar GHG- and/or beluga-related issues arising in connection with such other projects. The Québec and Federal Governments did so by adopting far more lenient approaches to the same environmental considerations (indeed, in various cases failing to consider them at all), as set out below.

474. In addition, both the Québec and Federal Governments accorded less favourable treatment to GNLQ by subjecting it to two separate and parallel environmental processes under the MELCC and CEAA 2012 regimes. Instead, GNLQ should have been assessed under a single,

683 See para. 29. Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-37**, p.161

joint and cooperative procedure, which has been accorded to a number of similar and comparable projects.

a) The Québec and Federal Governments treated the GNLQ Project less favourably when assessing its GHG emissions versus those of comparator projects in like circumstances.

(i) Provincial comparator projects

475. To recall, the Québec Cabinet Decision of 21 July 2021 refused to authorise the GNLQ Project, citing GNLQ's alleged failure to address its projected contribution to global GHG emissions and to energy transition as primary reasons.[684]

476. GNLQ was the only project refused by the Québec Government on the basis of such criteria. The MELCC environmental assessment process has not previously nor subsequently applied them to other similar and comparable projects. As Me Duchaine highlighted, « l'effet réel sur le bilan mondial des gaz à effet de serre, en plus d'être une compétence du fédéral, est une donnée qui semble n'avoir jamais été analysée avant le Projet et qui ne l'a pas été subséquemment dans les projets comparables étudiés. »[685]

i. Cacouna LNG Project

477. In June 2007, the Québec Government authorised Cacouna LNG in Québec.[686] TransCanada Pipelines Limited and Petro-Canada, both of which are Canadian entities, jointly proposed this project.[687] Cacouna LNG concerned the development of an LNG import terminal to be located at the Gros Cacouna Port, including storage tanks, pumping and vaporization equipment, offices and maintenance and security buildings. In addition, Cacouna LNG was to include a wharf on the St. Lawrence River for the berthing and unloading of LNG tankers.

---

684 Décret 1071-2021 Concernant le refus de délivrer une autorisation à GNL Québec inc. pour le projet Énergie Saguenay de construction d'un complexe de liquéfaction de gaz naturel sur le territoire de la ville de Saguenay, 21 July 2021, pp. 5060-5061, **Exh. C-0274**.

685 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p.92 (**CER-1**)

686 Gouvernement du Québec, Décret 537-2007 concernant la délivrance d'un certificat d'autorisation en faveur de TransCanada PipeLines Limited pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna, 27 juin 2007, **Exh. C-0349**.

687 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p.1, **Exh. C-0350**.

478. Cacouna LNG was therefore very similar and comparable to GNLQ, as it concerned the import and regasification of LNG, whereas GNLQ concerned the liquefaction and export of LNG.

479. Cacouna LNG's proponents estimated that the terminal's operation would generate approximately 131,670 tons of GHG emissions per year.[688] They further undertook to submit a plan to mitigate Cacouna's GHG emissions. However, the proponents failed to provide any details concerning such potential mitigation measures.[689]

480. Despite the substantial annual GHG emissions Cacouna LNG would emit, and in the absence of any concrete mitigation measures, the MELCC nonetheless found that the Cacouna LNG project was environmentally acceptable. In so doing, MELCC expressly referred to and agreed with Cacouna LNG's figures showing that LNG generated around 49% fewer GHG emissions than coal and 30% fewer than fuel oil.[690] The MELCC then reasoned that increased use of natural gas in Québec to replace more polluting fossil fuels would sufficiently offset GHG emissions from the project's operations,[691] helping Québec achieve its GHG emission reduction objective under the Québec Government's 2006-2012 Climate Change Action Plan.[692]

481. The MELCC in its review of GNLQ likewise did not dispute the underlying premise that LNG was less polluting than other fossil fuels like coal, fuel oil and diesel.[693] However, in GNLQ's case, the MELCC was ambivalent about LNG, holding instead that its benefits were only good in the short term and that its role in energy transition should become more limited beyond 2030. The MELCC declared to the contrary that it was instead best to invest in renewable energies and in carbon capture, storage and use technologies, and to make gains in energy efficiency, rather than to invest in an LNG project.[694]

---

688 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007,p. 96, **Exh. C-0350**.

689 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 97, **Exh. C-0350**.

690 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 97, **Exh. C-0350**.

691 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 98, **Exh. C-0350**.

692 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 98, **Exh. C-0350**.

693 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, pp. 11, 49, **Exh. C-0269**.

694 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 52, **Exh. C-00269**.

482. In stark contrast to its attitude vis-à-vis Cacouna, the MELCC specifically doubted whether GNLQ could demonstrate its LNG would have a positive substitutive effect of compared with other more polluting fossil fuels, arguing that GNLQ had not identified clients (which, in any event, was incorrect) or concluded contracts upfront (despite GNLQ having achieved significant progress in that regard).[695]

483. In doing so, the MELCC paid no regard to the obvious fact that GNLQ, being at the stage of environmental approval, would not typically have signed final supply contracts with end users (although the MELCC ignored GNLQ's evidence that it had, in fact, secured substantial expression of interest in its supply from international offtakers).[696] In any event, the MELCC made no such demands of Cacouna LNG, simply giving it the benefit of the doubt that its LNG would have a substitutive effect. The MELCC's sudden questioning of the substitutive value of GNLQ's LNG also directly ignored to the longstanding policy statements of the Québec Government, consistently recognizing LNG's contribution to the energy transition.[697]

484. Through these measures, the MELCC accorded more favourable treatment to Cacouna LNG than GNLQ with respect to the assessment of GHG emissions.

ii. Rabaska LNG Project

485. In October 2007, the Québec Government authorised Rabaska LNG. Gaz Métro, Gaz de France and Enbridge, which are respectively Canadian (Gaz Métro, Enbridge) and French (Gaz de France) enterprises, proposed this project.[698] Rabaska LNG was to entail the construction an LNG import terminal,[699] including two storage tanks, a marine jetty to receive LNG tankers, pumping, compression and vaporizing facilities and a pipeline of

695 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 52, **Exh. C-00269**.

696 *See* Witness Statement of Tony Le Verger, signed 21 November 2023, para. 218 (**CWS-3**); and GNLQ, Commentaires adressés à l'AEIC (22 octobre 2021), **Exh. TLV-0088**, p. 2.

697 See para. 29.

698 See MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p.2, **Exh. C-0351**; Gouvernement du Québec, Décret 918-2007 concernant la délivrance d'un certificat d'autorisation en faveur de la société en commandite Rabaska pour la réalisation de la partie du projet Rabaska relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, 24 octobre 2007, **Exh. C-0352**.

699 Gouvernement du Québec, Décret 918-2007 concernant la délivrance d'un certificat d'autorisation en faveur de la société en commandite Rabaska pour la réalisation de la partie du projet Rabaska relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, 24 octobre 2007, **Exh. C-0352**.

approximately 50 km.[700] Its terminal's operation was estimated to generate approximately 144,798 tons of GHG emissions per year.[701] The MELCC adopted the assumption that the natural gas imported to the terminal would replace more GHG-emitting energy sources such as fuel oil, and that the Rabaska LNG project therefore would reduce GHG emissions in the medium term.[702]

486. Like Cacouna LNG, Rabaska LNG was comparable to GNLQ as it concerned the import and regasification of LNG and related shipping and port facilities on the St Lawrence.[703]

487. At the time of approving the Rabaska LNG Project in 2007, the MELCC noted in its environmental analysis report that the Québec Government had already taken important climate change-related steps and made important mitigation commitments:

- The Québec Government had ratified the United Nations Framework Convention on Climate Change (UNFCCC) in November 1992 and signed up to its objective of reducing GHG emissions;[704]

- The Québec National Assembly had ratified the Kyoto Protocol on 28 November 2006, which imposed additional GHG emission reduction objectives;[705]

- The Québec Government had unveiled its 2006-2012 Climate Change Action Plan in June 2006. The Climate Change Action Plan was intended to reduce the province's energy sector's reliance on intensive GHG-emitting fossil fuels.[706]

488. Therefore, by 2007, the issue of climate change already was recognized by Québec and reflected in its commitments.

---

700 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, pp. iii, **Exh. C-0351**.

701 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, pp. v, 33-35, 87, **Exh. C-0351**.

702 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, pp. v, 33, **Exh. C-0351**.

703 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p.94 (« …Le projet Rabaska se compare aussi aisément avec le Projet de GNL Québec puisqu'il s'agit de deux projets de GNL … ») (**CER-1**).

704 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 32, **Exh. C-0351**.

705 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 32, **Exh. C-0351**.

706 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 33, **Exh. C-0351**.

489. The Rabaska proponents asserted that the project would lead to a net reduction of 2.335 million tons of GHG emissions per year across Canada and the U.S.,[707] due to the positive substitutive effect of LNG compared with more GHG-emitting fuel oil.[708] The MELCC did not question the accuracy of this estimate.[709] The MELCC further concluded that the estimated 144,798 tons of GHG emissions generated per year by Rabaska's import terminal were justified, on the basis that the natural gas supply could reduce reliance more GHG-emitting fuel oil.[710] As with Cacouna LNG, the MELCC did not question whether Rabaska had secured clients or contracts to evidence that its LNG would have positive substitutive effects on GHG emissions.

490. In its analysis of GNLQ, the MELCC acknowledged that its hydroelectric-powered liquefaction terminal was 84% less polluting than a conventional terminal, and also recognized GNLQ's adoption of substantial mitigation measures (including its commitment to achieve carbon-neutrality in its operations).[711] It also acknowledged that the GNLQ Project was estimated to lead to 28 million tons of GHG emissions reductions per year.[712]

491. However, in contrast to the Rabaska LNG project, the MELCC's conclusions on GNLQ's GHG emissions in Québec and on the global scale failed to take into account either GNLQ's positive emissions profile, or its further commitments to reduction, or indeed the offsetting effect of the LNG it was to produce. Instead, the MELCC subjected GNLQ to less favourable treatment by citing the purported uncertainty of GNLQ's commitment to make the operations of GNLQ Project carbon-neutral.[713] The MELCC did so without pointing to any evidence substantiating this alleged uncertainty. Yet it still relied on this supposed uncertainty to deem the GNLQ Project to be environmentally unacceptable.[714] As Me

---

707 Rabaska, Réponse à la question QE – 019, 12 December 2006, BAPE Doc No. DA84, **Exh. C-0353**.

708 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 34, **Exh. C-0351**. The MELCC report mistakenly refers to a reduction of "220,000 million tons" of GHG emissions.

709 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 34, **Exh. C-0351**.

710 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, pp. v, 33, 87, **Exh. C-0351**. *See also* Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p.95 (« … Le Rapport d'analyse environnementale du projet Rabaska conclut même aux bénéfices du GNL sur une baisse des coûts d'énergie moins générateur de GES … ») (**CER-1**).

711 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 39-40, **Exh. C-0269**.

712 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 50, **Exh. C-0269**.

713 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 46, **Exh. C-0269**.

714 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 47, **Exh. C-0269**.

Duchaine highlighted, the MELCC's treatment of GNLQ on this issue was astonishing, as it has both previously and subsequently authorised projects with GHG emissions "sans exiger la démonstration de la carboneutralité du projet".[715]

492. Therefore, the MELCC accorded more favourable treatment to Rabaska LNG than GNLQ with respect to the assessment of GHG emissions.

iii. Stolt LNGaz Project

493. In August 2015, the Québec Government authorised the construction and operation of the Stolt LNGaz project (**Stolt LNGaz**), a natural gas liquefaction plant in the industrial park and port of Bécancour.[716] The project, proposed by SNC-Lavalin, a Canadian enterprise,[717] was expected to produce 1 million tons of LNG per year and emit 31,000 tons of GHGs per year of operations.[718] Its primary clients would be based in the Côte-Nord and Bas-Saint-Laurent regions, as well as the isolated regions of northern Québec and Labrador.[719]

494. Stolt LNGaz was therefore comparable to GNLQ as they both comprised a natural gas liquefaction plant.

495. Although GHG emissions was identified as one of the six key issues of Stolt LNGaz's environmental assessment, the MELCC's analysis of this issue ran for barely one page.[720] By contrast, the MELCC devoted almost 20 pages devoted to that same issue in its final report on the GNLQ Project.[721] For Stolt LNGGaz, MELCC merely focused on and agreed with Stolt LNGaz's claim that its expected production of 1 million tons of LNG per year

---

715 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p. 98 (**CER-1**).

716 Gouvernement du Québec, Gouvernement du Québec, Décret 719-2015, 19 août 2015 concernant la délivrance d'un certificat d'autorisation à Stolt LNGaz Inc. pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la Ville de Bécancour, **Exh. C-0354**.

717 Gouvernement du Québec, Gouvernement du Québec, Décret 719-2015, 19 août 2015 concernant la délivrance d'un certificat d'autorisation à Stolt LNGaz Inc. pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la Ville de Bécancour, **Exh. C-0354**.

718 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, pp. 20-21, **Exh. C-00355**.

719 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, pp. iii, 8, **Exh. C-00355**.

720 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, pp. iii, 20-21, **Exh. C-00355**.

721 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, pp. 37-54, **Exh. C-00269**.

would reduce the GHG emissions for Québec by approximately 600,000 tons per year, as LNG would replace heavy or light oil.[722]

496. The MELCC conducted no analysis of these figures, quickly concluding that Stolt LNGaz would help reduce Québec's GHG emissions and taking the proponent's figures at face value.[723] The MELCC then confirmed without further analysis that the project was acceptable with regard to its GHG emissions.[724]

497. By contrast, the GNLQ project was estimated to lead to 28 million tons of global GHG emissions reductions per year (a figure the MELCC did not seek to challenge).[725] Yet unlike in the case of Stoltz Gas, as described above, the MELCC doubted GNLQ's ability to achieve such GHG emission reductions, alleging (incorrectly) that GNLQ had not yet identified clients or concluded any contracts.[726] The MELCC raised no similar concern about Stolt LNGaz's ability to prove its claim of reducing GHG emissions, and made no enquiry as to whether it had entered into firm contracts with identified clients for the onward sale of its LNG.

498. Therefore, the MELCC accorded more favourable treatment to Stolt LNGaz than GNLQ with respect to the assessment of GHG emissions.

iv. Blackrock Metals Project

499. In April 2019, the Québec Government authorised the construction and operation of a vanadium processing facility operated by Blackrock Metals (**Blackrock**) at the Port of Saguenay,[727] within a few kilometres of the GNLQ Project site. The proponent is Métaux

---

722 The proponent's estimate was based on the assumption that 50% of the project's LNG output would be distributed in Québec to establishments that did not previously have access to natural gas : *see* MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, pp. 20-21, **Exh. C-00355**.

723 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, p. 21, **Exh. C-00355**.

724 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, pp. 21, **Exh. C-00355**.

725 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 50, **Exh. C-0269**.

726 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 52, **Exh. C-0269**.

727 Gouvernement du Québec, Décret 372-2019 concernant la délivrance d'une autorisation à Métaux BlackRock inc. pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay, 3 avril 2019, **Exh. C-0356**.

Blackrock inc., a Canadian enterprise.[728] The MELCC found that Blackrock would emit 395,000 tons of GHG emissions annually during operations.[729]

500. Blackrock was therefore comparable to GNLQ, as their respective project operations were concerned with processing natural resources, and they were expected to emit a similar level of GHG emissions.

501. In its environmental assessment of Blackrock, the MELCC applauded Blackrock's efforts to reduce its GHG emissions through reliance on natural gas and electricity to power its operations, noting that they instead could have reached between 731,000 to 776,000 tons per year if powered by coal.[730] Yet Blackrock made no commitment to offset its 395,000 tons of annual GHG emissions, nor did it complete a lifecycle assessment of its products' impact on GHG emissions.

502. Blackrock also proposed to sell an additional 135,000 tons per year of titanium slag.[731] The MELCC did not consider the global GHG emissions impact of these sales.[732]

503. In sum, as Me Duchaine found, the Québec Government granted BlackRock environmental approval despite it being much more polluting than GNLQ, especially given the latter's commitment to carbon-neutrality. [733]

504. By contrast, as referenced above, the MELCC questioned the feasibility of GNLQ's commitment to making its operations carbon-neutral. [734] It demanded that GNLQ affirmatively demonstrate a positive GHG impact arising out of the consumption of its LNG

---

728 Gouvernement du Québec, Décret 372-2019 concernant la délivrance d'une autorisation à Métaux BlackRock inc. pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay, 3 avril 2019, **Exh. C-0356**.

729 MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038, 27 février 2019, pp. iii, 3, 13, **Exh. C-0218**.

730 *See* MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038, 27 février 2019, p. 13, **Exh. C-0218**.

731 *See* MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038, 27 février 2019, pp. iii, 2-3, 10, 18, 29-30, 35, **Exh. C-0218**.

732 *See* MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038, 27 février 2019, pp. iii, 2-3, 10, 18, 29-30, 35, **Exh. C-0218**.

733 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, pp. 84, 93-94 (**CER-1**).

734 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 46, **Exh. C-00269**.

production, on a global scale.[735] The MELCC did so notwithstanding its own proviso that global GHG emissions could not be accounted for as part of Québec's GHG emissions, since Québec has no control over them.[736]

505. Further downplaying the positive substitutive effects of LNG on GHG emissions, MELCC instead relied on the supposed uncertainty surrounding the GNLQ Project's global impact on GHG emissions as a key factor militating against finding the Project to be environmentally acceptable.[737]

506. Therefore, the MELCC accorded more favourable treatment to Blackrock than GNLQ with respect to the assessment of GHG emissions.

(ii) Federal Comparator Projects

507. The Government of Canada predicated its decision to refuse the GNLQ Project on its alleged impact on the achievement of Québec's and Canada's GHG emission and climate change objectives.[738] Specifically, the Federal Decision Statement on GNLQ referred to the IAAC Report. The IAAC's analysis claimed that the GNLQ Project "would be the 17th largest emitter of greenhouse gases in Qu[é]bec" and that its GHG emissions "would contribute to the accumulation of greenhouse gases … in addition to being long-lasting and irreversible". It ultimately concluded that GNLQ's GHG emissions "would induce significant adverse environmental effects" and affect "the achievement of Qu[é]bec's and Canada's greenhouse gas emission and climate change objectives" (emphasis added).[739]

508. In making this finding, the Federal Government failed to consider the statement in the same IAAC Report to the effect that "the potential international impact of substituting other energy sources with natural gas … is beyond the scope of the environmental assessment of the Project".[740] The IAAC's affirmation also flew in the face of longstanding government policy recognizing LNG as a key transition fuel promoting the reduction in consumption of more

735 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, pp. 49-52, **Exh. C-00269**.

736 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 49, **Exh. C-00269**.

737 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11, 30 June 2021, p. 75, **Exh. C-00269**.

738 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, pp. 43, 49, **Exh. C-37**.

739 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 211, **Exh. C-37**.

740 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 43, **Exh. C-37.**

GHG emitting fuels.[741] Apart from being completely inconsistent and unlawful in its own right, in denying the Project on this basis the Government of Canada accorded to the GNLQ Project treatment that was less favourable than the treatment it accorded to comparable projects in like circumstances.

i. LNG Canada Export Terminal Project

509. In 2015, Canada approved the LNG Canada Export Terminal project (**LNG Canada**),[742] proposed by LNG Canada Development Inc., a Canadian enterprise.[743] Like GNLQ, LNG Canada concerned the construction and operation of a natural gas liquefaction facility and marine terminal.[744] LNG Canada's operations, which would be powered by a mix of natural gas turbines for the liquefaction process as well as electricity from the BC Hydro grid for the remainder of its facilities, were projected to produce 3.96 million tons of GHG emissions per year, after meeting about 256,000 tons of GHGs from its five-year construction period.[745] In accordance with the CEAA, the BC Environmental Assessment Office (**EAO)** conducted its environmental assessment as the substituted authority.[746]

510. The nature of LNG Canada was therefore comparable to GNLQ: both comprised a natural gas liquefaction facility and marine terminal.

511. The EAO concluded that GHG emissions from LNG Canada would have "a significant residual adverse effect … significant because of the existing context of global greenhouse gas emissions and the magnitude of the proposed Project's emissions, which would have a notable impact on BC's emissions reduction targets".[747]

---

741 See para. 29.

742 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the LNG Canada Export Terminal Project, 17 June 2015, **Exh. C-0357**.

743 *See, e.g.,* Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the LNG Canada Export Terminal Project, 17 June 2015, **Exh. C-0357**.

744 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the LNG Canada Export Terminal Project, 17 June 2015, **Exh. C-0357**.

745 Environmental Assessment Office, LNG Canada Export Terminal Project – Assessment Report, 6 May 2015, pp. 21, 27, 60, **Exh. C-0358**.

746 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the LNG Canada Export Terminal Project, 17 June 2015, **Exh. C-0357**.

747 Environmental Assessment Office, LNG Canada Export Terminal Project – Assessment Report, 6 May 2015, pp. 62-63, **Exh. C-0358**.

512. Notwithstanding the EAO's conclusion on the "significant residual adverse effect" of LNG Canada's GHG emissions, the project was approved by BC and by Canada.[748]

513. By contrast, GNLQ was not approved on the Federal level, despite that its operations produced roughly 488,500 tons of GHG emissions per year, and despite that it had committed to offset these with a carbon neutrality program.[749]

514. As Mr Northey highlights, LNG Canada's operations would be 8 times more polluting, [750] and had no record of committing to offset its GHG emissions footprint. This difference in treatment becomes all the more stark considering that LNG Canada was only expected to produce a little over twice the volume of LNG (26 million tons)[751] than GNLQ (11 million tons).[752] Therefore, even after calibrating both projects on capacity, LNG Canada was approved over GNLQ even though the former would be about 4 times more polluting in terms of GHG emissions per unit of production.

515. Despite that LNG Canada's annual operations was by any measure many times more polluting than GNLQ, the EAO merely asserted that "it is not possible to estimate the impacts of an individual project's emissions on global climate change".[753] This lenient approach again contrasts sharply with its analogous conclusion on GNLQ, which were dramatically less polluting, but that the IAAC decided might prejudice "the achievement of Qu[é]bec's and Canada's … climate change objectives".[754]

516. Compounding this difference in treatment, in June 2019 the Federal Government confirmed that it would provide Can$ 275 million of subsidies to LNG Canada, citing its "potential to help the world build a low carbon energy future".[755] In contrast, when considering GNLQ's

---

748 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the LNG Canada Export Terminal Project, 17 June 2015, **Exh. C-0357**.

749 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, , pp.40, 45, **Exh. C-37.**

750 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 167, 173 (**CER-2**).

751 Environmental Assessment Office, LNG Canada Export Terminal Project – Assessment Report, 6 May 2015, p. 61, **Exh. C-0358**.

752 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, , pp.ii, 1, **Exh. C-37.**

753 Environmental Assessment Office, LNG Canada Export Terminal Project – Assessment Report, 6 May 2015, p. 60, **Exh. C-0358**.

754 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 49, **Exh. C-37**.

755 Innovation, Science and Economic Development Canada, Government of Canada confirms support for largest private investment in Canadian history, 24 June 2019, **Exh. C-0359**.

analogous claim about LNG's positive substitutive effects to replace more carbon-intensive fossil fuels, the IAAC instead took the view that this was "impossible to validate", on the basis that GNLQ has not signed any contracts with potential customers upfront.[756] As noted above, requiring this of GNLQ at the stage of environmental approval flew in the face of typical project lifecycles, and in any event ignored the actual progress made by GNLQ to identify substantial end-users of its product.

517. Therefore, the EAO accorded more favourable treatment to LNG Canada than GNLQ with respect to the assessment of GHG emissions.

ii. Pacific NorthWest Project

518. In September 2016, Canada approved the Pacific NorthWest project (**Pacific NorthWest**),[757] which concerned the construction and operation of an LNG liquefaction, storage and marine export terminal facility, to be located at Port Edward, BC. The proponent was Pacific Northwest LNG Limited Partnership, the shareholders of which are a mix of Malaysian, Chinese, Indian and Bruneian entities.[758] Pacific NorthWest was to be powered by natural gas turbines,[759] and in the result its liquefaction process was to be significantly more "carbon intensive" than GNLQ, powered by electricity, including hydroelectricity.[760]

519. Pacific NorthWest was therefore comparable to GNLQ as they both comprised a natural gas liquefaction facility and marine terminal.

520. The CEAA specifically recognised that Pacific NorthWest would entail the combustion of fossil fuels and thereby contribute to the project's GHG emissions during operations, estimated to generate approximately 4.5 *million* tons of GHG emissions per year. This high

---

[756] Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, pp.42-43, **Exh. C-37**

[757] Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Pacific NorthWest Project, 27 September 2016, Exh**. C-0360**.

[758] *See, e.g.,* Canadian Environmental Assessment Agency, Pacific NorthWest Project – Environmental Assessment Report, p. 1, **Exh. C-0361**; Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Pacific NorthWest Project, 27 September 2016, **Exh. C-0360**.

[759] Canadian Environmental Assessment Agency, Pacific NorthWest Project – Environmental Assessment Report, pp. 14, 16-17, **Exh. C-0361.**

[760] Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 41, **Exh. C-37**.

number of GHG emissions was in fact a reduced estimate due to "engineering refinements" from the original estimate of 5.2 million tons of GHG emissions per year.[761]

521. The CEAA also reviewed Pacific NorthWest's upstream emissions, estimated at between 8.8 and 9.3 million tons of GHG emissions per year.[762] It further noted that Pacific NorthWest would increase provincial and Canada-wide GHG emissions by 8.5% and by 0.75%, as well as global GHG emissions by 0.015%.[763]

522. The CEAA found Pacific NorthWest's suggested GHG emission mitigation measures to be insufficient,[764] and that the project was likely to cause significant adverse environmental effects.[765]

523. Despite Pacific NorthWest's extremely high volume of GHG emissions (*i.e.*, 4.5 *million* tons per year during operations,), as well as the CEAA's determination that these GHG emissions would have a significant adverse environmental effect, the Federal Government approved the project.[766]

524. By contrast, GNLQ was refused authorisation, even though its operations would produce only around 488,500 tons per year of operations (making Pacific NorthWest's operations many times more polluting than GNLQ), and had committed to a carbon neutrality program to offset its GHG emissions. Mr Northey made similar finding with respect to this difference in GHG emissions levels, highlighting that Pacific NorthWest would have "8-9 times greater GHG emissions" than GNLQ.[767]

525. Therefore, the CEAA accorded more favourable treatment to Pacific NorthWest than GNLQ with respect to the assessment of GHG emissions.

---

761 Canadian Environmental Assessment Agency, Pacific NorthWest Project – Environmental Assessment Report, pp. 37-38, **Exh. C-0361.**

762 Canadian Environmental Assessment Agency, Pacific NorthWest Project – Environmental Assessment Report, p. 41, **Exh. C-0361.**

763 Canadian Environmental Assessment Agency, Pacific NorthWest Project – Environmental Assessment Report, p. 38, **Exh. C-0361.**

764 Canadian Environmental Assessment Agency, Pacific NorthWest Project – Environmental Assessment Report, pp. 36-43, **Exh. C-0361.**

765 Canadian Environmental Assessment Agency, Pacific NorthWest Project – Environmental Assessment Report, p. 43, **Exh. C-0361.**

766 Government of Canada, *News Release*, "The Government of Canada Approves Pacific NorthWest LNG Project", dated 27 September 2017, **Exh. C-0362**.

767 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 167, 173 (**CER-2**).

iii. North Shore Marine Terminal Project

526. In October 2018, Canada authorised the North Shore Marine Terminal project (**North Shore Terminal**), to be located on the north shore of the Saguenay River.[768] The proponent is the SPA, a Canadian federal public enterprise.[769] GHG emissions from its operations were estimated to be approximately 108,700 tons per year.[770] The CEAA noted that 99.6% of those GHG emissions would not be "under the proponent's control", as it would result largely from "trucking of ore and cargo outside the Terminal's boundaries; from ships navigating within a 10 kilometre radius of the wharf; and from the production of electricity required for the Terminal".[771]

527. The nature of North Shore Terminal was therefore comparable to GNLQ as they both involved a marine terminal destined to encourage shipping on the Saguenay and onwards to the St Lawrence River, and indeed were located on the opposite sides of the Saguenay River.

528. The CEAA ultimately concluded that North Shore Terminal's "projected volume of direct and indirect GHG emissions … after implementation of the proponent's proposed mitigation measures would be low". In so finding, it commented in a brief sentence that "the GHG emissions are global in nature, long-term and irreversible because of the persistence of CO_2 in the atmosphere", but did not otherwise assess the project's effects on global GHG emissions.

529. As such, North Shore Terminal was not subject to regulatory scrutiny as to how the project might impact global GHG emissions, at all. This stands in stark contrast to the IAAC's treatment of GNLQ, which was found to "induce significant adverse direct and cumulative effects that could have an impact on the achievement of Quebec's and Canada's greenhouse gas emission and climate change objectives", on the basis that GHGs "cause environmental effects on a global scale because of their cumulative nature and their contribution to climate

768 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the North Shore Terminal Project, 20 October 2018, **Exh. C-0363**.

769 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the North Shore Terminal Project, 20 October 2018, **Exh. C-0363**.

770 Canadian Environmental Assessment Agency, North Shore Terminal – Environmental Assessment Report, October 2018, p. 64 and Table 5, **Exh. C-0215**.

771 Canadian Environmental Assessment Agency, North Shore Terminal – Environmental Assessment Report, October 2018, p. 67, **Exh. C-0215**.

change."[772] As noted above, this analysis failed to give due regard to GNLQ's commitment to carbon neutrality, and the global offsetting role of the LNG it was set to produce.

530. Therefore, the CEAA accorded more favourable treatment to NorthShore Terminal than GNLQ with respect to the assessment of GHG emissions.

iv. Bay du Nord Offshore Oil Project

531. In April 2022, Canada approved the Bay du Nord Offshore Oil Project (**Bay du Nord**), having identified no significant adverse environmental impact from the project despite the project's significant projected GHG emissions.[773] The proponent is Equinor (formerly Statoil Canada Ltd), a Norwegian entity.[774] The projected emissions from its operation were estimated to be between 177,800 and 309,400 tons of GHG emissions per year depending on power generation, or approximately 2.4 percent of the Newfoundland and Labrador's average annual GHG emissions.[775]

532. The nature of Bay du Nord was therefore comparable to GNLQ as they both operated in the energy sector and their project operations would emit significant volumes of GHGs.

533. The IAAC concluded that the residual volume of GHG emissions from Bay du Nord were moderate, and that their effect in a particular location could not be measured. In the context, it acknowledged in passing that "the geographic extent of [Bay du Nord's] environmental effects is global due to the cumulative nature of GHG emissions and their contribution to climate change at the global level", but did not appear to assess or otherwise draw any conclusions about the project's contribution to global GHG emissions.[776] Ultimately, it concluded that Bay du Nord was "not likely to cause significant adverse environmental effects on air quality or as a result of GHG emissions".[777]

---

772 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 49, **Exh.** Error! Reference source not found..

773 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Bay du Nord Development Project, 6 April 2022, **Exh. C-0364**.

774 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Bay du Nord Development Project, 6 April 2022, **Exh. C-0364**.

775 Impact Assessment Agency of Canada, Bay du Nord Development Project – Environmental Assessment Report, Deember 2021, p.97, **Exh. C-0365**.

776 Impact Assessment Agency of Canada, Bay du Nord Development Project – Environmental Assessment Report, Deember 2021, p.99, **Exh. C-0365**.

777 Impact Assessment Agency of Canada, Bay du Nord Development Project – Environmental Assessment Report, Deember 2021, p.99, **Exh. C-0365**.

534. The IAAC in reaching these conclusions failed to consider any of the GHG emissions arising from the use of oil from Bay du Nord, despite the fact that oil would emit more GHGs than LNG and have no substitutive effect as compared with more carbon-intensive energy sources. Yet perversely, the IAAC put GNLQ to the test of demonstrating that LNG consumption would result in overall reduction of GHG through displacement of dirtier fuels, and purported to reject GNLQ on the basis that this substitutive effect had not been adequately demonstrated.[778]

535. Indeed, while the IAAC ignored Bay du Nord's potential to lead to a global increase in GHG emissions, it gave no such quarter to GNLQ, despite the latter's positive contribution to the global energy transition:

> The Agency recognizes that greenhouse gas emissions cause environmental effects on a global scale because of their cumulative nature and their contribution to climate change.
>
> Consequently, despite the measures that will be deployed to limit greenhouse gas emissions, the [GNLQ] Project would induce significant adverse direct and cumulative effects that could have an impact on the achievement of Quebec's and Canada's greenhouse gas emission and climate change objectives.[779]

536. Of significance, neither Bay du Nord nor the IAAC mentioned or assessed that project's carbon "lock-in" risk, in stark contrast to the stringent standard to which the IAAC held the GNLQ Project, citing the prejudicial findings of the MELCC (emphasis added):

> The contribution of greenhouse gas emissions from the [GNLQ] Project would be continuous and would contribute to the accumulation of greenhouse gases in the atmosphere and in the oceans in addition to being long-lasting and irreversible due to the persistence of CO_2.
>
> … [T]he MELCC (MELCC, June 2021) and the Bureau d'audiences publiques sur l'environnement (BAPE, March 2021), indicate that <u>any additional emissions in Quebec would increase the estimated level of additional reduction effort required to reach the 2030 target</u> … The MELCC environmental analysis report also mentions that the [GNLQ] Project would pose a risk to the government of Quebec's achievement of carbon neutrality by 2050. (MELCC, June 2021).[780]

---

778 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 20, **Exh. C-37**.

779 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 49, **Exh. C-37**.

780 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 49, **Exh. C-37**.

537. Therefore, the IAAC accorded more favourable treatment to Bay du Nord than GNLQ with respect to the assessment of GHG emissions.

v. Cedar LNG Project

538. In March 2023, Canada approved the Cedar LNG project (**Cedar**) after finding that it would have no significant adverse environmental effects.[781] The proponent is Cedar LNG Partners LP, a Canadian enterprise.[782] The project concerned the construction and operation of a floating LNG processing facility and marine export terminal located near Kitimat, BC. Cedar was expected to produce approximately 3 million tons of LNG per year, and would have storage capacity for up to 250,000 cubic meters of LNG.[783]

539. The nature of Cedar therefore comparable to GNLQ as they both comprised a LNG processing facility and marine terminal.

540. The BC EAO reviewed Cedar's GHG emissions. The EAO had the Federal Government's delegated authority to conduct the assessment under the Federal Impact Assessment Act, reflecting the goal of "one project, one assessment".[784]

541. Cedar's operations were projected to generate 251,300 tons of GHG emissions per year from, among other things, stationary combustion sources; thermal oxidizer; flares; LNG carriers/tugboats; and purchased electricity.[785] This translates to just over half the volume of GHG emissions that the GNLQ's operations were expected to generate per year (*i.e.*, 488,500 tons), not accounting for GNLQ's plans to become carbon-neutral.[786] However, GNLQ's liquefaction facility was in this respect more productive and 'efficient', as it was

781 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Cedar LNG Project, 15 March 2023, **Exh. C-0366**.

782 *See* Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Cedar LNG Project, 15 March 2023, **Exh. C-0366**; Environmental Assessment Office, Cedar LNG Project – Environmental Assessment Report, 16 November 2022, p.33, **Exh. C-0368**.

783 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Cedar LNG Project, 15 March 2023, **Exh. C-0366**.

784 *See* Government of Canada, *News Release*, "Federal Government Provides Concurring Decision to British Columbia on Cedar LNG", dated 15 March 2023, **Exh. C-0367**.

785 Environmental Assessment Office, Cedar LNG Project – Environmental Assessment Report, 16 November 2022, Table 39, p. 403, **Exh. C-0368**.

786 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, p. 40, **Exh. C-37**.

projected to process over three times more LNG (*i.e.*, about 11 million tons) per year than Cedar.[787]

542. Further, the EAO referred to its estimate that Cedar's upstream emissions would amount to approximately 975,000 tons of GHG emissions per year.[788] However, it specifically noted that such upstream GHG emissions were "not considered part of the Project", and were only included for "context".[789] It also noted that the calculation of downstream GHG emissions was not part of the scope of Cedar's environmental assessment.[790]

543. The EAO thus concluded that the GHG emissions produced by Cedar were justifiable on the basis that:

> Cedar LNG could have a positive impact on GHG emissions globally, if the importing countries were to use the natural gas as a replacement for coal in power production, due to the fact that natural gas-fired electricity generation results in approximately 40 percent less GHG emissions than coal-fired electricity generation … Cedar LNG is likely to be one of, if not the lowest emission intensity producers of LNG globally, largely because of its reliance on clean B.C. electricity.[791]

544. This appraisal is equally applicable to the GNLQ Project, one of the rationales for which was that "global demand for natural gas is growing strongly and is likely to continue, due in particular to the replacement of more polluting fossil fuels (coal and oil)".[792] However, when the same prospect was presented by GNLQ, the IAAC considered it to be clouded by a "high level of uncertainty", "impossible to validate" and "cannot be confirmed".[793] In the result, unlike Cedar, the Federal Government proceeded to find that the GNLQ Project was "likely

---

787 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, pp. ii, 1, **Exh.** Error! Reference source not found..

788 Environmental Assessment Office, Cedar LNG Project – Environmental Assessment Report, 16 November 2022, p. 405, **Exh. C-0368.**

789 Environmental Assessment Office, Cedar LNG Project – Environmental Assessment Report, 16 November 2022, pp. 403, 405, **Exh. C-0368.**

790 Environmental Assessment Office, Cedar LNG Project – Environmental Assessment Report, 16 November 2022, p. 408. **Exh. C-0368.**

791 Environmental Assessment Office, Cedar LNG Project – Environmental Assessment Report, 16 November 2022, p. 406, **Exh. C-0368**.

792 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021,, pp. 20, 42, **Exh. C-37**.

793 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021,, p. 43, **Exh. C-37**.

to cause significant adverse environmental effects related to an increase in the pollutant greenhouse gas emissions".[794]

545. Therefore, the IAAC accorded more favourable treatment to Cedar than GNLQ with respect to the assessment of GHG emissions.

b) The Québec and Federal Governments treated the GNLQ Project less favourably when assessing its shipping impacts on belugas versus those of comparator projects in like circumstances.

(i) Provincial comparator projects

i. Cacouna LNG Project

546. The Cacouna LNG project, which was approved in June 2017, entailed a marine import terminal for LNG. Belugas frequented the vicinity of the project site, which was located in the middle of the species' birthing area.[795] This project was jointly proposed by TransCanada Pipelines Limited (now TC Energy) and Petro-Canada, both of which were Canadian entities.[796] Cacouna LNG had an intrinsic shipping element, but the MELCC did not assess this aspect. Instead, its analysis of Cacouna LNG's impact on beluga centred only on the construction phase, notwithstanding that its marine terminal was expecting up to one LNG tanker every four days during operations.[797]

547. Cacouna LNG was comparable to GNLQ because it involved a marine terminal using the same waterway system, the St Lawrence, as did the ships chartered to support GNLQ.

548. The MELCC found the Cacouna LNG project's noise during the construction phase to be problematic for belugas.[798] Nevertheless, it ultimately approved the Cacouna LNG project on the basis of additional beluga-related mitigation measures, all of which, as Me Duchain notes, were solely focussed on the construction phase of the project, and ignored any issues arising from ship traffic, despite that Cacouna's operations necessarily entailed shipping: yet

---

794 Government of Canada, *News Release*, "Government of Canada Releases the Final Decision on the Énergie Saguenay Project", 7 February 2022, **Exh. C-0295**.

795 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 52, **Exh. C-0350.**

796 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 1, **Exh. C-0350.**

797 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 13, **Exh. C-0350.**

798 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, p. 52, **Exh. C-0350.**

"l'augmentation du trafic maritime sur le Saint-Laurent est déterminant pour GNL Québec alors que ce n'est pas le cas pour des projets comme [Cacouna LNG]".[799]

549. The MELCC's lack of attention to Cacouna LNG's shipping-related impacts onbelugas stands in stark contrast to its critical dissection of the same issue in relation to the GNLQ Project. This differential treatment is particularly inexplicable given that unlike GNLQ, Cacouna was to be sited directly in the midst of a beluga critical habitat area, whereas GNLQ was located outside of the beluga's critical habitat zone.[800]

550. Therefore, the MELCC accorded more favourable treatment to Cacouna LNG than GNLQ with respect to the assessment of shipping impacts on belugas.

ii. Rabaska LNG Project

551. Rabaska LNG, approved in October 2017, was a project jointly proposed by Gaz Métro, Gaz de France and Enbridge, whose proponents as noted above were Canadian (Gaz Métro; Enbridge) and French (Gaz de France) entities.[801] The project was to be situated less than 2 km away from the mating areas of belugas in the St. Lawrence River, and was to include a marine terminal.[802] Its proponents estimated that approximately 60 LNG tankers would be required per year: as the MELCC concluded, this would entail a 2.5% increase in the annual traffic on the St. Lawrence river.[803] In its report, the MELCC referred to the policy position of the Québec Ministère des Transports (**MTQ**) in support of developing sustainable transport activities in the maritime corridor of the St. Lawrence. The MTQ found that Rabaska LNG reflected such progress, being a tool for the socio-economic development of

---

799 MELCC, Rapport d'analyse environnementale pour le projet de terminal méthanier Énergie Cacouna sur le territoire de la Municipalité de Cacouna par TransCanada PipeLines Limited, Dossier 3211-04-041, 22 juin 2007, pp. 53-59, **Exh. C-0350.** *See also* Expert Report of Ms. Christine Duchaine, signed 21 November 2023, pp.6, 84, 130 (**CER-1**).

800 DFO. 2012. Recovery Strategy for the beluga whale (Delphinapterus leucas) St. Lawrence Estuary population in Canada. Species at Risk Act Recovery Strategy Series. Fisheries and Oceans Canada, Ottawa, **Exh. C-0370**.

801 See MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p.2, **Exh. C-0351**; Gouvernement du Québec, Décret 918-2007 concernant la délivrance d'un certificat d'autorisation en faveur de la société en commandite Rabaska pour la réalisation de la partie du projet Rabaska relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, 24 octobre 2007, **Exh. C-0352**.

802 Gaz Metro – Enbridge – Gaz de France, "LNG receiving Terminal on the Saint-Laurent — Pre-Feasibility of the Jetty Component of the Project" (February 2004), **Exh. C-0369**.

803 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 14, **Exh. C-0351**.

the regions of Québec and Chaudière-Appalaches, and would serve as a vector in the use and development of maritime transport in Québec.[804]

552. As stated above, Rabaska LNG was comparable to GNLQ because it was an LNG facility including a marine terminal.

553. However, despite Rabaska LNG's proximity to the mating areas of belugas, the MELCC failed to assess any impact on belugas (notably arising out of the projected increase in marine traffic). Instead, the MELCC simply noted that the site of the Rabaska terminal itself was not used by marine mammals.[805]

554. Applying the same reasoning, the MELCC should likewise have refrained altogether from assessing the impact of GNLQ or its ships: there was never any suggestion that belugas would use or frequent the GNLQ site. Indeed, the MELCC had even more reason to assess Rabaska LNG on this criteria instead of GNLQ, given that Grande-Anse, the site of GNLQ'sfacilities, wasoutside beluga's critical habitat.[806]

555. Therefore, the MELCC accorded more favourable treatment to Rabaska LNG than GNLQ with respect to the assessment of shipping impacts on belugas.

iii. Stolt LNGaz Project

556. Stolt LNGaz, situated at the port of Bécancour[807] and approved in August 2015, estimated that its operations would engage between one to three LNG tankers per week,[808] resulting in approximately 52 to 156 LNG tankers traversing the St. Lawrence River per year. As noted

---

804 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 14, **Exh. C-0351**.

805 MELCC, Rapport d'analyse environnementale Projet Rabaska Partie relative à l'implantation d'un terminal méthanier sur le territoire de la Ville de Lévis, Dossier 3211-04-039, 19 octobre 2007, p. 11, **Exh. C-0351**. Expert Report of Ms. Christine Duchaine, signed 21 November 2023, pp.6, 84 (**CER-1**).

806 DFO. 2012. Recovery Strategy for the beluga whale (Delphinapterus leucas) St. Lawrence Estuary population in Canada. Species at Risk Act Recovery Strategy Series. Fisheries and Oceans Canada, Ottawa, **Exh. C-0370.**

807 Gouvernement du Québec, Gouvernement du Québec, Décret 719-2015, 19 août 2015 concernant la délivrance d'un certificat d'autorisation à Stolt LNGaz Inc. pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la Ville de Bécancour, Exh. C-0354.

808 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, pp.iii, 8, **Exh. C-0355**.

above, the project was proposed by SNC-Lavalin, a Canadian enterprise.[809] As noted earlier, Stolt LNGaz planned to prioritise distribution of LNG to industrial clients in the Côte-Nord and Bas-Saint-Laurent regions, as well as to isolated communities in northern Québec and Labrador.[810]

557. Despite that ships connected with this project would pass through the same parts of the St. Lawrence river as GNLQ's ships, the MELCC altogether left out belugas in its assessment of Stolt LNGaw. This contrast with the MELCC's highly critical treatment of GNLQ on the same issue, deeming that the increase in marine traffic (essentially, one ship every other day), might potentially have a non-negligible cumulative impact on belugas, justifying refusal of the Project. As such, the MELCC accorded clearly less favourable treatment to GNLQ than to Stolt LNGaz in its assessment of impacts.

iv. Arianne Phosphate Project

558. In December 2015, the Québec Government authorised Arianne Phosphate's apatite mine project located at Lac à Paul, about 200km north of the city of Saguenay (**Arianne Phosphate**).[811] The proponent, also called Arianne Phosphate Inc., is a Canadian entity.[812] The MELCC's environmental analysis report acknowledged that Arianne Phosphate would rely on a third party (in this case, the SPA) for the marine shipping of its apatite.[813]

559. The operations of Arianne Phosphate were therefore comparable to those of GNLQ, because it entailed shipping through a marine terminal located on the north shore of the Saguenay River.

560. The MELCC acknowledged in this context that the SPA had commenced a Federal environmental assessment process under the CEAA 2012 regime, although the relevant

---

809 Gouvernement du Québec, Gouvernement du Québec, Décret 719-2015, 19 août 2015 concernant la délivrance d'un certificat d'autorisation à Stolt LNGaz Inc. pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la Ville de Bécancour, **Exh. C-0354**.

810 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, pp. iii, 8 **Exh. C-0355**.

811 Gouvernement du Québec, Décret 1139-2015 concernant la délivrance d'un certificat d'autorisation à Arianne Phosphate Inc. pour le projet de mine d'apatite du lac à Paul sur le territoire non organisé Mont-Valin, 16 décembre 2015, **Exh. C-0371**.

812 Gouvernement du Québec, Décret 1139-2015 concernant la délivrance d'un certificat d'autorisation à Arianne Phosphate Inc. pour le projet de mine d'apatite du lac à Paul sur le territoire non organisé Mont-Valin, 16 décembre 2015, **Exh. C-0371**.

813 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de mine d'apatite du lac à Paul sur le territoire non organisé Mont-Valin par Arianne Phosphate Inc., Dossier 3211-16-007, 9 février 2016, pp. 60-61, **Exh. C-0372**.

environmental impact statement for (what would become) North Shore Terminal had not yet been submitted at that time.[814] As Me Duchaine notes, the MELCC confirmed that, had Arianne Phosphate included a marine terminal, this would have been outside its own jurisdiction, and that part would have been subject to a Federal environmental assessment.[815] This of course stood in stark contrast to MELCC's treatement of GNLQ.

561. For Arianne Phosphate, theMELCC noted that: (i) the social and environmental impacts of the related marine terminal raised a large number of concerns; and (ii) the related marine terminal's exclusion from the provincial environmental assessment process had been the subject of criticism.[816] Regardless, the MELCC went on to disregard how the project's apatite concentrate product would be shipped to customers, and proceeded to conclude that the project was environmentally acceptable.[817]

562. Shipping traffic connected with Arianne Phosphate, and its impact on belugas, would *de facto* be considered under the CEAA's Federal environmental assessment of North Shore Terminal. As detailed further below, although GNLQ was estimated to contribute a similar amount of shipping traffic, the IAAC took a markedly more critical approach towards GNLQ's potential impacts on belugas than it did in assessing the North Shore Terminal.

563. Overall, the MELCC accorded more favourable treatment to Arianne Phosphate than GNLQ with respect to the assessment of shipping impacts on belugas.

v. BlackRock Metals Project

564. Blackrock, approved in April 2019, was projected to need roughly 2 to 3 ships per month (*i.e.*, approximately 24 to 36 ships per year) to transport its product on the Saguenay and St. Lawrence Rivers, including through the critical habitat of beluga whales.[818] As noted, its

814 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de mine d'apatite du lac à Paul sur le territoire non organisé Mont-Valin par Arianne Phosphate Inc., Dossier 3211-16-007, 9 février 2016, p.61, **Exh. C-0372**.

815 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, pp.106-107 (**CER-1**).

816 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de mine d'apatite du lac à Paul sur le territoire non organisé Mont-Valin par Arianne Phosphate Inc., Dossier 3211-16-007, 9 février 2016, p.61, **Exh. C-0372**.

817 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de mine d'apatite du lac à Paul sur le territoire non organisé Mont-Valin par Arianne Phosphate Inc., Dossier 3211-16-007, 9 février 2016, p.61, **Exh. C-0372**.

818 MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038 (27 February 2019), p. 29, **Exh. C-0218.**

proponent is Métaux Blackrock inc., a Canadian entity.[819] The MELCC in the course of its Blackrock assessment noted a concern that belugas might be affected by this increase in marine traffic. However, itmade no further reference to the issue in its final conclusions and proceeded to declare that the project was environmentally acceptable.[820]

565. In addition to the reasons already stated, Blackrock's operations were comparable to GNLQ because they entailed a measureable increase in shipping on the Saguenay and St. Lawrence rivers.

566. In its assessment of Blackrock, the MELCC recognised that an increase in noise connected with marine traffic could add pressures that negatively affect the St. Lawrence beluga population.[821] However, to address the issueBlackrock provided only bare undertakings, in the most generic and high-level terms, amounting to little more than vague commitments (expressed in a single paragraph) to engage with maritime stakeholders and to implement future mitigation measures following consultations with researchers.[822] In stark contrast to GNLQ, Blackrock made no mention of itsshipping arrangements, and in particular into potential noise-reduction and mitigation measures they might adopt.

567. Nevertheless, the MELCC confirmed that it was persuaded that these vague Blackrock commitments would reduce any impacts of increased marine traffic attributable to theproject.[823] The Québec Government went on to authorise the project, subject only to the condition that Blackrock compensate for direct and indirect harm caused to wetlands and

819 Gouvernement du Québec, Décret 372-2019 concernant la délivrance d'une autorisation à Métaux BlackRock inc. pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay, 3 avril 2019, **Exh. C-0356**.

820 MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038 (27 February 2019), pp. 29, 35, **Exh. C-0218.**

821 MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038 (27 February 2019), pp. 29, 35, **Exh. C-0218.**

822 MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038 (27 February 2019), p. 30, **Exh. C-0218.**

823 MELCC-DGEES, Rapport d'analyse environnementale pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay par Métaux BlackRock inc., Dossier 3211-14-038 (27 February 2019), p30, **Exh. C-0218**.

marine mammals caused by the work carried out as part of the project, by way of a financial contribution to be paid into the Environmental and Water Protection Fund.[824]

568. The MELCC's lenient and cursory consideration of Blackrock's approach to belugas contrasts sharply with its treatment of the same issue with respect to GNLQ, where it devoted almost ten pages of highly critical and sceptical analysis to the potential for mitigation before deeming it impossible to conclude that the GNLQ Project was environmentally acceptable.[825] Among this was an entire subsection dissecting GNLQ's various commitments and mitigation measures (including its environmental charter), leading to the pronouncement that no demonstrably efficient subaquatic noise mitigation measure existed with regard to the risk posed by navigation in the Saguenay River to the rehabilitation of the beluga population.[826] As Me Duchaine notes, Blackrock received drastically more favourable treatment as Québec's authorisation decree made no mention of belugas.[827] The treatment was all the more arbitrary and unjust given that Québec had expressly facilitated and encouraged GNLQ to site its operations on the Saguenay, and more generally as a matter of policy promoted the Saguenay as a vector for economic development.

569. In sum, the MELCC accorded more favourable treatment to Blackrock than tp GNLQ with respect to the assessment of shipping impacts on belugas.

(ii) Federal comparator projects

i. North Shore Terminal Project

570. In October 2018, Canada approved North Shore Terminal, proposed by the SPA, a Canadian Federal public enterprise.[828] The project was to be situated on the Saguenay River shore opposite GNLQ's site The MELCC concluded that it caused "no significant adverse direct or cumulative impact" on the beluga population or on the cultural heritage of the Innu First Nations".[829]

---

824 Décret 372-2019 concernant la délivrance d'une autorisation à Métaux BlackRock inc. pour le projet d'usine de transformation de concentré de fer en fonte brute et en ferrovanadium sur le territoire de la ville de Saguenay, 3 avril 2019, p. 1418, Exh. C-0356.

825 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), pp. 29-37, **Exh. C-269**.

826 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), pp. 33-35, **Exh. C-269**.

827 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, pp.112-113 (**CER-1**)

828 See Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the North Shore Terminal Project, 20 October 2018, **Exh. C-0363**.

829 Minister of Environment and Climate Change Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the North Shore Terminal Project, 20 October 2018, **Exh. C-0363**.

571. In terms of marine traffic, the North Shore Terminal was projected to add up to 140 ships per year on the Saguenay River.[830] This encompassed ships needed for the transport of apatite concentrate from the Arianne Phosphate project, which was slated to be North Shore Terminal's "first client".[831] The CEAA's assessment thus *de facto* encompassed the marine traffic increase attributable to Arianne Phosphate.

572. North Shore Terminal was comparable to GNLQ for purposes of the regulatory measures at issue, as they both involved marine terminals on the Saguenay, and were expected to entail a similar level of increase in maritime traffic.

573. The CEAA noted in this regard that North Shore Terminal "would result in one or two ships a week docking at the wharf to meet the needs of the Arianne Phosphate mining company, and two or three ships a week under the maximum operation scenario involving several clients".[832] This is comparable to the maximum operating scenario of "[t]hree to four tankers per week" in the case of the GNLQ Project.[833]

574. The CEAA found that "the effects of [North Shore Terminal] on the beluga are not significant … [and] is not likely to cause significant cumulative effects on the St. Lawrence beluga".[834] In contrast, the IAAC in GNLQ's case concluded that a similar volume of shipping connected with the Project was "likely to result in direct and cumulative significant adverse environmental effects on marine mammals, including beluga whales".[835]

575. This discrepancy in the Federal analysis of the two projects is particularly striking, considering that: (i) their respective sites are only a few kilometres apart on opposite sides of the Saguenay River; (ii) ships docking at the marine terminal of both projects would pass through the same parts of the Saguenay River; and (iii) both projects were submitted for assessment around the same time under the CEAA 2012 regime. Mr Northey similarly

---

830 Canadian Environmental Assessment Agency, North Shore Terminal Project – Environmental Assessment Report, October 2018, pp. 22, 186, **Exh. C-0215**.

831 Canadian Environmental Assessment Agency, North Shore Terminal Project – Environmental Assessment Report, October 2018, pp. ii, 1, 21, **Exh. C-0215**.

832 Canadian Environmental Assessment Agency, North Shore Terminal Project – Environmental Assessment Report, October 2018, p.91, **Exh. C-0215**.

833 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-37**, p.19.

834 Canadian Environmental Assessment Agency, North Shore Terminal Project – Environmental Assessment Report, October 2018, p.185, **Exh. C-0215**.

835 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-37**, p.62.

highlights that, notwithstanding the almost identical volume of shipping associated with the GNLQ and North Shore Terminal projects, the Federal authorities treated them inconsistently and without transparency by refusing approval to GNLQ only.[836]

576. As Me Duchaine notes, the Québec Government's unlawful exercise of jurisdiction over the GNLQ Project's potential shipping impacts on belugas was especially prejudicial, given that it would have received a much more favourable outcome had the Federal Government led the environmental assessment.[837]

577. The CEAA and the IAAC likewise considered how shipping connected with North Shore Terminal and the GNLQ Project, in particular their potential effects on belugas, might in turn impact Aboriginal and treaty rights. Both projects' Federal environment assessment reports noted in this regard that belugas have cultural significance for various Innu First Nations.[838] However, theydrew starkly different conclusions on this issue, notwithstanding similar contributions to marine traffic.

578. Specifically, the CEAA found that North Shore Terminal "could have a low to moderate impact on potential or established Aboriginal or treaty rights",[839] based on (among others) a parallel finding that it "is unlikely to have any significant adverse cumulative effects on the St. Lawrence beluga".[840] In contrast, the IAAC determined with respect to the GNLQ Project that it "is likely to cause moderate to high adverse impacts on the Aboriginal and treaty rights of the [Innu] First Nations … for the practice of their customary activities and with the direct and significant cumulative effects on the beluga whale".[841] This is again notwithstanding that the volume of shipping connected with both projects were similar and comparable.

---

836 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 191-194 (**CER-2**).

837 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p. 98 (**CER-1**).

838 Canadian Environmental Assessment Agency, North Shore Terminal Project – Environmental Assessment Report, October 2018, pp. 134, 155, 227, 228, **Exh. C-0215**. Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-37**, pp. 190, 193, 200, 204, 207-208.

839 Canadian Environmental Assessment Agency, North Shore Terminal Project – Environmental Assessment Report, October 2018, p.248, **Exh. C-0215**.

840 Canadian Environmental Assessment Agency, North Shore Terminal Project – Environmental Assessment Report, October 2018, p.228, **Exh. C-0215**.

841 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-37**, p.211.

579. Therefore, the CEAA accorded more favourable treatment to North Shore Terminal than GNLQ with respect to the assessment of shipping impacts on belugas.

ii. Contrecoeur Port Terminal Expansion Project

580. In March 2021, Canadian approved the Contrecoeur Port Terminal Expansion project to construct a container port terminal (**Contrecoeur Port Terminal**).[842] The proponent is the Montreal Port Authority, a Canadian entity.[843] The project was expected to accommodate and thereby increase the volume of marine traffic by up to 156 ships per year.[844] According to the IAAC's report, "[t]he St. Lawrence River … is the shipping route" of the project,[845] such that shipping connected with it would necessarily pass through the critical habitat areas of belugas downstream.

581. The nature of Contrecoeur Port Terminal was comparable to GNLQ for this regulatory purpose, as they both involved marine terminals on the same river and would entail a similar contribution to maritime traffic.

582. Despite this, the IAAC's report on Contrecoeur Port Terminal merely observed that "[s]hips heading for the port of Contrecoeur will have to comply with the measures implemented by Transport Canada, Parks Canada, and Fisheries and Oceans Canada to protect vulnerable marine mammals, including the beluga whale (St. Lawrence Estuary population)".[846] This was the sole occasion in which belugas were mentioned throughout the entire IAAC report.

583. The IAAC therefore did nothing to assess Contrecoeur Port Terminal's impact on belugas (or even marine mammals in general). However, it did consider the impact of underwater noise from shipping connected with the project on fish, despite acknowledging that the same issue would have a greater impact on marine mammals (emphasis added):

> In the operation phase, the noise of ships carrying the containers (one to three per week) would be the main source of underwater noise. In the absence of evidence, Fisheries and Oceans Canada cannot comment on the effects of ship noise on fish.

---

842 Minister of the Environment of Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Contrecoeur Port Terminal Expansion Project, 1 March 2021, **Exh. C0373**.

843 Minister of the Environment of Canada, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 for the Contrecoeur Port Terminal Expansion Project, 1 March 2021, **Exh. C0373**.

844 Impact Assessment Agency of Canada, Contrecoeur Port Terminal Expansion Project – Environmental Assessment Report, March 2021, **Exh. C-0374**, pp.ii, 1, 92.

845 Impact Assessment Agency of Canada, Contrecoeur Port Terminal Expansion Project – Environmental Assessment Report, March 2021, **Exh. C-0374**, p.15.

846 Impact Assessment Agency of Canada, Contrecoeur Port Terminal Expansion Project – Environmental Assessment Report, March 2021, **Exh. C-0374**, p.5.

> These effects would depend, among other things, on the characteristics of the ships, their power and speed, and the environment in which the sound present in the area is propagated. However, Fisheries and Oceans Canada believes that the effect is less on fish than on marine mammals.[847]

584. As such, the IAAC seemed to accept that shipping connected with Contrecoeur Port Terminal would result in environmental impacts in the form of subaquatic noise, but was selective in assessing the issue with respect to fish only, and not to belugas or even to marine mammals in general. Mr Northey notes the extremely limited scope of the IAAC's assessment of Contrecoeur Port Terminal's marine shipping impact.[848]

585. Notwithstanding that the GNLQ Project would entail a similar increase on maritime traffic (*i.e.*, between 140 to 156 ships per year), through the same St. Lawrence River, the difference in the IAAC's treatment of GNLQ could not be starker. In particular, the IAAC's final report on GNLQ devoted no less than 16 pages to analyse the Project's impact on marine mammals (including belugas), and ultimately concluded that it was "likely to result in direct and cumulative significant adverse environmental effects".[849]

586. Therefore, the IAAC accorded more favourable treatment to Contrecoeur than GNLQ with respect to the assessment of shipping impacts on belugas.

c) The Québec and Federal Governments treated the GNLQ Project less favourably when subjecting it to two separate environmental assessment processes, as opposed to other projects in like circumstances which were only subject to a single, joint environmental assessment process in like circumstances.

587. The Québec and Federal Governments each separately subjected the GNLQ Project to their respective environmental assessments under the MELCC and CEAA 2012 regimes. As both Me Duchaine and Mr Northey state, the fact that GNLQ underwenttwo separate and parallel environmental assessments amounted to inherently less favourable treatment,[850] given that comparable projects have instead been subject to only a single, joint and collaborative environmental assessment process.

---

847 Impact Assessment Agency of Canada, Contrecoeur Port Terminal Expansion Project – Environmental Assessment Report, March 2021, **Exh. C-0374**, p.66.

848 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 183 (**CER-2**).

849 Impact Assessment Agency of Canada, Énergie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-37**, pp.52-68.

850 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, pp. 4, 66, 128 (**CER-1**); Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 72-76 (**CER-2**).

588. Both Québec and Canada concluded the Canada-Québec Agreement on Environmental Assessment Cooperation in 2004, which was renewed in 2010 ("**Canada-Québec Agreement**"). Me Duchaine and Mr Northey agree that the Canada-Québec Agreement established a default framework for the two jurisdictions to conduct a single environmental assessment process of a project jointly whenever they both "have an environmental assessment responsibility for [that] project" pursuant to their respective environmental laws.[851] This accorded with the principle of 'one project, one assessment'.[852]

589. Undergoing only a single rather than two separate parallel environmental assessments could only be beneficial for a project and its proponent. As Me Duchaine summarises, the Canada-Québec Agreement « comporte des avantages indéniables pour le promoteur d'un projet qui voit le processus d'évaluation environnementale simplifiée, ce qui évite et les dédoublements dans les procédures d'évaluation des gouvernements du Canada et du Québec et réduit les coûts et les délais associés à ces deux régimes. »[853] Mr Northey similarly highlights the risk of inconsistency and conflict due to overlapping environmental assessment standards from multiple processes.[854]

590. According to both Me Duchaine and Mr Northey, GNLQ was entitled to a single, coordinated environmental process where different aspects of its Project engaged both Québec and Federal environmental laws.[855] Despite this, both levels of Government failed to apply the Canada-Québec Agreement. GNLQ thus became subject to separate and parallel environmental assessments under the MELCC and CEAA 2012 regimes. Given the complexity, costs and the risk of conflicting assessments, this was both grossly unfair and detrimental to GNLQ, as it ultimately led to the Québec Government 'prejudging' the Project's fate ahead of the Federal Government's environmental assessment decision.[856]

---

851 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p. 98 ("Le principe d'un projet, une évaluation est largement appliqué depuis des décennies ... Les droits et obligations respectifs existent depuis longtemps et un promoteur a par conséquent une expectative légitime que les gouvernements vont respecter leur propre Entente. ») (**CER-1**). Expert Report of Mr. Rodney Northey, signed 20 November 2023, p.76 (GNLQ "was entitled to a coordinated federal-provincial decision.") (**CER-2**).

852 See: Government of Canada, "News Release: Backgrounder: Renewal of the Canada- Québec Agreement on Environmental Assessment Cooperation" (25 October 2010), **Exh. RN-0035-ENG**; and (Duchaine Report, p. 66). Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p.66 (**CER-1**).

853 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p. 66 (**CER-1**); Expert Report of Mr. Rodney Northey, signed 20 November 2023, para.76 (**CER-2**).

854 Expert Report of Mr. Rodney Northey, signed 20 November 2023, para.51 (**CER-2**).

855 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p. 72 (**CER-1**).

856 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p. 75 (**CER-1**); Expert Report of Mr. Rodney Northey, signed 20 November 2023, para.76 (**CER-2**).

591. In contrast, the Québec and Federal Governments accorded a number of the identified comparator projects cited above more favourable treatment by subjecting them to a single, joint and collaborative environmental assessment process only. These include the Cacouna LNG and Rabaska LNG projects, both proposed by Canadian entities, which were similar to the GNLQ Project as they were all concerned with LNG, had shipping elements and would be located in the same Saguenay-St Lawrence region. While Cacouna LNG and Rabaska LNG engaged both the Québec and Federal environmental regimes, the two Governments agreed to constitute joint review panels in conformity with the Canada-Québec Agreement, which collaboratively assessed and ultimately authorised both projects.[857]

592. Similarly, both Me Duchaine and Mr Northey highlight the North Shore Terminal as a further example of the Québec and Federal Government according more favourable treatment to a project, by subjecting it to only one environmental process led by the Federal Government under the CEAA 2012 regime. North Shore Terminal, proposed by the SPA (a Canadian Federal enterprise), was similar to GNLQ, as their respective sites were on the opposite shores of the Saguenay River, and their operations entailed a similar volume of shipping.[858] Both agreed that GNLQ was entitled to a single joint and collaborative environmental assessment process.[859]

593. As Mr Northey further emphasizes, it was inexplicable that North Shore Terminal, but not GNLQ received the more favourable treatment of a single environmental assessment process, even though both were located on Federal land: "[n]o document in the [IAAC]'s Registry addresses why the North Shore [Terminal] project on federal port lands was subject to [F]ederal [environmental assessment] only in comparison to the [GNLQ Project] also on federal port lands".[860] Ultimately, the single environmental assessment process approved the North Shore Terminal project, whereas GNLQ received a refusal from a flawed procedure characterised by the Québec and Federal Governments' joint failure to collaborate in accordance with the Canada-Québec Agreement.[861]

---

857 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, pp.67-69 (**CER-1**).

858 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p. 70 (**CER-1**). Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 73-74, 192 (**CER-2**).

859 Expert Report of Ms. Christine Duchaine, signed 21 November 2023, p.74 (**CER-1**). Northey report, para.76

860 Expert Report of Mr. Rodney Northey, signed 20 November 2023, paras. 73-74 (**CER-2**)

861 Duchaine Report, pp. 64, 75**, CER-1**; Northey Report, paras. 72-76, **CER-2**.

594. Therefore, both Québec and Canada accorded less favourable treatment to by subjecting it to two separate provincial and Federal environmental assessment processes.

B. The Measures Amount to a Breach of NAFTA Article 1105

1. The Requirement to Grant Fair and Equitable Treatment under NAFTA Article 1105(1)

595. Article 1105(1) of the NAFTA provides that:

> "Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security."

596. In 2001, the NAFTA Free Trade Commission (**FTC**) stated in a Note of Interpretation that "Article 1105(1) prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Party."[862]

597. The standard to be protected under Article 1105(1), as elaborated by the FTC, has been the subject of significant consideration by NAFTA tribunals.[863] The modern content of fair and equitable treatment under the customary international law minimum standard was notably explained by the tribunal in *Waste Management v. Mexico*, and endorsed by many others, in the following terms:

> "[T]he minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is

---

862 NAFTA Free Trade Commission, Note of Interpretation of Certain Chapter 11 Provisions (31 July 2001).

863 Some tribunals have relied upon the standard evoked in the U.S.-Mexico Claims Commission's decision in *F.H. Neer and Pauline E. Neer (United States) v. Mexico*, **CL-00034**. *See, e.g., Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award (8 June 2009), para. 616, **CL-00035**; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), para. 286, **CL-00021**; *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012), paras. 152-153, **CL-00036**. Others have further emphasized that *Neer* did not deal with investment protection, and therefore the standard to be applied in investment arbitration is not limited to that articulated in Neer. *See, e.g., Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award (11 October 2002), para. 115, **CL-00037** (due to this dissimilarity in circumstances, "there is insufficient cause for assuming that provisions of bilateral investment treaties, and of NAFTA […] are confined to the Neer standard of outrageous treatment…"); *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Award (9 January 2003), para. 181, **CL-00038** ("There appears no logical necessity and no concordant state practice to support the view that the *Neer* formulation is automatically extendible to the contemporary context of foreign investors and their investments by a host or recipient State."); *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), para. 433, **CL-00024** ("NAFTA awards make it clear that the international minimum standard is not limited to conduct by host states that is outrageous. The contemporary minimum international standard involves a more significant measure of protection."); *Eco Oro Minerals Corp. v. The Republic of Columbia* (ICSID Case No. ARB/16/41), Award (9 September 2021), para. 744, **CL-00039** ("[T]he Tribunal does not accept that the meaning of MST under customary international law must remain static. The meaning must be permitted to evolve as indeed international customary law itself evolves; it should be understood today to include today's notions of what comprises minimum standards of treatment under customary international law. Colombia correctly accepts that the Tribunal is not rigidly bound by the standard set out in *Neer* and it is the Tribunal's view that the standard today is broader than that defined in the *Neer* case.").

> arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety – as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant."[864]

598. Likewise, the tribunal in *Mobil Investments v. Canada* confirmed:

> "(1) the minimum standard of treatment guaranteed by Article 1105 is that which is reflected in customary international law on the treatment of aliens;
>
> (2) the fair and equitable treatment standard in customary international law will be infringed by conduct attributable to a NAFTA Party and harmful to a claimant that is arbitrary, grossly unfair, unjust or idiosyncratic, or is discriminatory and exposes a claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety.
>
> (3) in determining whether that standard has been violated it will be a relevant factor if the treatment is made against the background of
>
> (i) clear and explicit representations made by or attributable to the NAFTA host State in order to induce the investment, and
>
> (ii) were, by reference to an objective standard, reasonably relied on by the investor, and
>
> (iii) were subsequently repudiated by the NAFTA host State."[865]

599. The fundamental protections contained in the minimum standard therefore include protection against a fundamental breach of due process, manifest arbitrariness, targeted discrimination, or the abusive treatment of investors.[866] Canada has embraced a similar approach to the minimum standard of treatment in its Model Foreign Investment Promotion and Protection Agreement (**FIPA**) and in the Canada-European Union Comprehensive

---

[864] *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), para. 98, **CL-00040**. *See also William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), paras. 442-444, **CL-00024**; *Mesa Power Group, LLC v. Government of Canada*, UNCITRAL, Award (24 March 2016), para. 501, **CL-00041** ("Having considered the Parties' positions and the authorities cited by them, the Tribunal is of the opinion that the decision in *Waste Management II* correctly identifies the content of the customary international law minimum standard of treatment found in Article 1105.").

[865] *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012), para. 152, **CL-00036**. *See also TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award (19 December 2013), para. 454, **CL-00042**.

[866] *See, e.g.*, Canada's Model Foreign Investment Promotion and Protection Agreement (2021) ("FIPA"), Article 8, **CL-00043**; Canada-European Union Comprehensive Economic and Trade Agreement, Article 8.10, **CL-00044**.

Economic and Trade Agreement (**CETA**), which both expressly link the minimum standard of treatment standard to these elements.[867]

600. In addition, a responding State's violation of an investor's legitimate expectations will be a "relevant factor" in assessing whether a measure amounts to a breach of the fair and equitable treatment standard.[868]

601. In determining whether the fair and equitable treatment standard has been violated in this case, the Tribunal must consider the specific circumstances in issue,[869] and how the standard applies to these facts.[870] As the tribunal in *Windstream v. Canada* recently stated, "just as the proof of the pudding is in the eating (and not in its description), the ultimate test of correctness of an interpretation is not in its description in other words, but in its application on the facts."[871]

2. Canada Breached the Claimant's Right to Fair and Equitable Treatment under NAFTA Article 1105(1)

602. As described in the following section, the measures for which Canada is responsible under NAFTA were procedurally grossly unfair, they were manifestly arbitrary, and they amounted to unfair targeting of the Claimant. Moreover, such measures violated the Claimant's legitimate expectations.

a) Canada's Measures were grossly procedurally unfair and violated due process

603. NAFTA tribunals have recognized that Article 1105(1) encompasses a State's obligation to accord investors and their investments due process.

604. As the tribunal in *Waste Management v. Mexico* put it, the minimum standard of treatment of fair and equitable treatment under NAFTA Article 1105 protects against "a lack of due process leading to an outcome which offends judicial propriety".[872] As noted by the

---

867 Canada's Model Foreign Investment Promotion and Protection Agreement (2021) ("FIPA"), Article 8, **CL-00043**; *See also* Canada-European Union Comprehensive Economic and Trade Agreement, Article 8.10, **CL-00044**

868 *See, e.g., Windstream Energy, LLC v. Government of Canada*, UNCITRAL, Government of Canada, Rejoinder Memorial (6 November 2015), paras. 208-209, **CL-00045**.

869 *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award (11 October 2002), para. 118, **CL-00036**. *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), paras. 98-99, **CL-00040**.

870 *Windstream Energy LLC v. Government of Canada*, UNCITRAL, Award (27 September 2016), para. 362, **CL-00046**.

871 *Windstream Energy LLC v. Government of Canada*, UNCITRAL, Award (27 September 2016), para. 362, **CL-00046**.

872 *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), para. 98, **CL-00040**; *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), paras. 442-443, **CL-00024**.

tribunals in *Waste Management v. Mexico*[873] and in *Bilcon v. Canada*,[874] such a lack of due process in breach of NAFTA Article 1105 may arise from "a complete lack of transparency and candour in an administrative process".

605. In *Bilcon v. Canada*, the tribunal clarified that while the finding of a NAFTA Article 1105 breach involves a high threshold, "there is no requirement in all cases that the challenged conduct reaches the level of shocking or outrageous behavior".[875] The tribunal went on to state that: "[t]he formulation also recognises the requirement for tribunals to be sensitive to the facts of each case, the potential relevance of reasonably relied-on representations by a host state, and a recognition that injustice in either procedures or outcomes can constitute a breach".[876]

606. In *Bilcon v. Canada*, the tribunal went on to find a breach of NAFTA Article 1105 with regard to due process on the following grounds. First, the claimants (project proponents) had lacked reasonable notice of the criterion ("community core values") that Canadian environmental assessment authorities ultimately applied to refuse to authorise the claimants' quarry mine and marine terminal project.[877] Second, the application of this "highly problematic"[878] criterion had caused genuine surprise not only to the claimants but also to experts in the field of Canadian environmental law.[879] Third and as a result, the claimants had been denied a fair opportunity to know the case they had to meet and to address it.[880]

607. In the present dispute, several aspects of the Québec and Federal Governments' conduct amounted to gross procedural unfairness.

608. *First*, as detailed in Me Duchaine's expert report, Québec fundamentally violated due process by failing to collaborate with the Federal Government on a joint environmental

---

873 *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), para. 98, **CL-00040**.

874 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), paras. 442-443, **CL-00024**.

875 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), para. 444, **CL-00024**.

876 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), para. 444, **CL-00024**.

877 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), para. 543, **CL-00024**.

878 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), para. 451, **CL-00024**.

879 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), para. 543.

880 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), para. 543, **CL-00024**.

assessment for GNLQ.[881] This Canada-Québec Agreement on Environmental Assessment Cooperation provided a default framework for the two jurisdictions to conduct a single environmental assessment process,[882] in accordance with the principle of 'one project, one assessment'.[883] Further to that agreement and normal practice, the GNLQ Project's environmental assessment should have been subject to a single joint review under appropriate Federal leadership.[884] Instead, the Claimant was improperly submitted to parallel Québec and Federal environmental assessments, including a Québec BAPE process that suffered from fundamental procedural flaws. In the course of its separate review, the Provincial government improperly reached conclusions regarding issues that it knew to be within the exclusive jurisdiction of the Federal Government (notably, shipping and its alleged impact on belugas),[885] and which moreover proved determinative of the refusal of the Project.

609. *Second*, as detailed in Mr Northey's expert report, the Federal Government in effect improperly ceded leadership of the environmental assessment of GNLQ to the Québec Government,[886] resulting in the early issuance of Québec's refusal on bases knowingly outside of the scope of its jurisdiction.[887] This in turn precipitated a Federal refusal that relied upon conclusions improperly reached by Québec,[888] and that ran contrary to typical Federal decision-making in areas of its competence (for example, with regard to the availability of mitigation measures to address potential impacts on belugas). Thus, as both Mr Northey and Me Duchaine highlight, the patently improper procedure applied in the course of the GNLQ Project's environmental assessment caused the Claimant real prejudice, both during the process and at its conclusion.[889] As Me Duchaine notes in her

---

881 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 64, 75, **CER-1**.

882 Canada-Québec Agreement, ss.5(1), 7(1) and 8(1); Expert Report of Me Christine Duchaine, 21 November 2023, p. 66, **CER-1** ("Le principe d'un projet, une évaluation est largement appliqué depuis des décennies ... Les droits et obligations respectifs existent depuis longtemps et un promoteur a par conséquent une expectative légitime que les gouvernements vont respecter leur propre Entente. »); Expert Report of Mr. Rodney Northey, 19 November 2023, para. 76, **CER-2** (GNLQ "was entitled to a coordinated federal-provincial decision").

883 See: Government of Canada, "News Release: Backgrounder: Renewal of the Canada- Québec Agreement on Environmental Assessment Cooperation" (25 October 2010), **RN-0035**; and Expert Report of Me Christine Duchaine, 21 November 2023, p. 66, **CER-1**.

884 Expert Report of Me Christine Duchaine, 21 November 2023, p. 66, **CER-1**; Expert Report of Mr. Rodney Northey, 19 November 2023, paras. 72-76, **CER-2**.

885 Expert Report of Me Christine Duchaine, 21 November 2023, p. 50, **CER-1**. See also pp.106-107, where Me Duchaine notes the MELCC confirming that, had the Arianne Phosphate project included a marine terminal, this would have been outside its own jurisdiction, and that part would have been subject to a Federal environmental assessment.

886 Expert Report of Mr. Rodney Northey, 19 November 2023, paras. 72-76, **CER-2**.

887 Expert Report of Me Christine Duchaine, 21 November 2023, p. 50, **CER-1**.

888 See, e.g., IAAC Report, p.47 (where the IAAC considered and analysed many conclusions reached by the MELCC on the GNLQ Project's GHG emissions).

889 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 4, 64, 75, 98, 128, **CER-1**; Expert Report of Mr. Rodney Northey, 19 November 2023, para. 76, **CER-2**.

report, the North Shore Terminal by contrast was authorised with a similar amount of marine shipping subject to mitigation measures regarding its potential impact on belugas, in line with the usual practice at the Federal level.[890]

610. *Third*, Québec violated due process by abruptly imposing new criteria on the Claimant with regard to the environmental assessment of the GNLQ Project after more than five years into the environmental review process. Introduced in March 2021, the additional "core criteria" of reducing worldwide GHG emissions and promoting energy transition for the authorisation of the GNLQ Project had never before been articulated.[891] In doing so, the Québec Government rendering the process fundamentally procedurally unfair.

611. Me Duchaine emphasised that it was contrary to law to introduce criteria at this stage. In accordance with Québec law, the MELCC's Directive of December 2015 confirmed the four corners of its environmental assessment process. Québec law on environmental evaluation fettered the exercise of the Government's discretionary decision-making power, by obliging it to determine and to transmit to a project proponent the relevant environmental assessment criteria at the beginning of the Project. [892]

612. Québec's law on environmental assessment not only obliges the proponent to generate an environmental assessment addressing the stated criteria, but also obliges the Minister to declare that study admissible solely on the basis of its compliance with the stated criteria. This is understandable given the considerable costs and time needed for an environmental assessment, as well as the inherent violation of natural justice of making a decision on the basis of criteria either not stated in the initial MELCC Directive or added only late in the process. [893] Indeed, the MELCC went on to confirm the admissibility of GNLQ's environmental assessment on the basis of the criteria set out in the initial Directive.[894]

613. However, as Me Duchaine notes, of the three "core criteria" suddenly invoked by the Minister as determinative to environmental approval in March 2021, two were not mentioned at all in the MELCC Directive (the GNLQ Project's global impact on GHGs, and its contribution to worldwide energy transition), while the third (social acceptability) had been mentioned only implicitly, and had not been the subject of any commentary or questions by MELCC over the course of its review.[895] The Directive did not enable the Environment Minister to peg the decision to authorise or refuse the GNLQ Project to

---

890 Expert Report of Me Christine Duchaine, 21 November 2023, p. 98, **CER-1**.

891 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 90, 92, **CER-1**; Assemblée Nationale du Québec, « Point de presse de M. Benoit Charette, ministre de l'Environnement et de la Lutte contre les changements climatiques », 24 March 2021, **Exh. C-0031**.

892 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 5, 80-81, **CER-1**.

893 Expert Report of Me Christine Duchaine, 21 November 2023, p. 77, **CER-1**.

894 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 76, 80, **CER-1**.

895 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 5, 24, 76, 129, **CER-1**.

criteria, two of which were entirely absent from the MELCC Directive, and a third only obliquely referenced.

614. In her Report, Me Duchaine explains that the Environment Minister's sudden announcement of new core criteria was highly unusual and was not in conformity with the environmental assessment rules applicable to the GNLQ Project under the EQA and the MELCC Directive.[896]

615. As such, it was fundamentally procedurally unfair, irregular and contrary to law for the Environment Minister to purport to introduce three new "key criteria" at this stage.[897] The procedural injustice here was amplified when these late-added criteria formed the basis for refusing to authorise the GNLQ Project.[898]

616. As Me Duchaine points out in her Report, the potential impact of navigation on belugas, which was another criterion for rejection, also was absent from the MELCC Directive.[899] It was instead added among the series of questions that the MELCC submittded on 3 March 2021, when it for the first time suggested a moratorium on shipping between April and October of each year.[900] As such, the late introduction of this criteria suffers from the same irregularity as the criteria announced by Minister Charette in March 2021.

617. As Me Duchaine underlines in her Report, the lateness of this "requirement" and the lack of transparency in refusing to authorise the GNLQ Project violated due process.[901] Imposing such a criterion so late in the environmental assessment amounted to dooming the GNLQ Project to fail in spite of GNLQ having invested substantial efforts and financial resources for years without the slightest idea or prior notice that it would be refused because of a requirement akin to a navigation ban.[902]

618. The Québec Government further demonstrated a complete lack of candour, compounding the procedural injustice, in refusing to provide any guidance to GNLQ on how to comply with these new, eleventh-hour core criteria. During a 22 April 2021 meeting with GNLQ Project team members, neither Environment Minister Charette nor any of his senior advisors were able or willing to provide GNLQ with any guidance.[903] Minister Charette

---

896 Expert Report of Me Christine Duchaine, 21 November 2023, p. 82, **CER-1**.

897 Expert Report of Me Christine Duchaine, 21 November 2023, p. 73, **CER-1**.

898 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, p. 75.

899 Expert Report of Me Christine Duchaine, 21 November 2023, p. 99, **CER-1**.

900 *See* MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), **Exh. C-00214**, Doc. No. PR10.7, question 25.

901 Expert Report of Me Christine Duchaine, 21 November 2023, p. 102, **CER-1**.

902 Expert Report of Me Christine Duchaine, 21 November 2023, p. 102, **CER-1**.

903 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198, **CWS-3**.

openly admitted that "he did not really know" how the GNLQ Project would be assessed against these supposed "criteria".[904] This meeting took place after multiple unanswered requests for clarification from GNLQ which had left GNLQ without any indication as to either the meaning of the new, eleventh-hour core criteria or how to comply with them.[905] The Minister also sought to rush GNLQ to submit its further responses to the new criteria.[906] As Me Duchaine notes, these factors compounded the manifest procedural irregularity of the decision, further pointing to an improper exercise of ministerial discretion.[907]

619. *Fourth,* Québec violated due process by ignoring the evidence submitted by GNLQ regarding the global impact of the project on GHG emissions, as well as the supportive conclusions of its own climate experts.[908] While the MELCC's final Environmental Analysis Report did not openly dispute all of this unambiguous, science-backed evidence, the MELCC instead sought to disregard it, holding simply that "plusieurs incertitudes demeurent quant à l'apport concret que pourrait avoir le projet s'il était réalisé sachant que les clients ne sont pas identifiés et que par conséquent, les ententes finales ne sont pas signées."[909]

620. As Me Duchaine underlines, « dans son rapport final d'analyse pour le Projet [GNLQ], les experts du [MELCC], se prononçant sur les émissions de GES qu'amène le Projet, ont écarté l'opinion de leurs propres experts qui sont responsables spécifiquement des GES … [p]ourtant, malgré l'avis favorable de ceux-ci, l'équipe d'analyse du [MELCC] ne juge pas le projet acceptable tant à ce qui a trait au bilan des GES à l'échelle mondiale qu'au Québec. »[910]

621. *Fifth*, in reaching this conclusion, the MELCC relied on a previously undisclosed and as of then, still unpublished scientific study co-authored by biased GREMM researcher Robert Michaud.**[911]** As Me Duchaine notes in her Report, this study was published only after the

---

904 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198, **CWS-3**.

905 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198, **CWS-3**.

906 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198, **CWS-3**.

907 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 27, 83, **CER-1**.

908 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, p. 52.

909 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, p. 52.

910 Expert Report of Me Christine Duchaine, 21 November 2023, p. 30, **CER-1**.

911 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, pp. 32-33 (the MELCC quoted the study as "Vergara et al., 2021, via MPO 2021"). The study, which had not yet been published at the time and was never shared with GNLQ, is Vergara et al., "Can you hear me? Impacts of underwater noise on communication space of adult, sub-adult and calf contact calls of endangered St. Lawrence belugas (Delphinapterus leucas)", Polar Research

MELCC produced its analysis report, i.e., on 15 July 2021.[912] GNLQ was therefore not aware of this study, was not informed that the MELCC was relying on it, and was denied the possibility of commenting on it. This again was a fundamental breach of due process and rendered the MELCC's conclusions manifestly arbitrary.

622. *Sixth*, Québec violated due process by declaring the parallel Gazoduq Project "dead" as of 21 July 2021 (the same day Québec announced the refusal to authorise the GNLQ Project), and by further declaring that there would be no BAPE public consultations process regarding the Gazoduq Project[913] long before its environmental assessment had reached that stage. On 8 September 2022, Premier Legault asserted that : "[i]l n'y aura pas de pipeline ou de gazoduc qui va passer sur le territoire du Québec" and that "the [Gazoduq] file is closed".[914]

623. *Seventh*, Canada violated due process in announcing as a matter of policy in September 2021 that it would never approve the GNLQ project,[915] prejudging and pre-empting the outcome of the federal environmental review, which was reduced to a *fait accompli*. Canada did so by flatly announcing, through a tweet of 14 September 2021, that GNLQ "will not see the light of day", [916] and pre-emptively condemned the Project's then ongoing Federal environmental assessment process.[917]

624. *Eighth*, Canada violated due process by failing to abide by its own binding EIS Guidelines in the GNLQ Project's Federal environmental assessment procedure. As Mr Northey highlights, these EIS Guidelines of March 2016 had expressly excluded from consideration any environmental effects of upstream GHG emissions and marine shipping.[918] However, the IAAC nevertheless assessed the GNLQ Project on the basis of these factors and

---

2021, 40, 5521, **Exh. C-00375**. This study was published only on 15 July 2021, two weeks after the MELCC-DGEES issued its final report on 30 June 2021.

912 Expert Report of Me Christine Duchaine, 21 November 2023, p. 36, **CER-1**.

913 *See* Radio-Canada, « Rejet de GNL Québec: il n'y aura pas de BAPE sur le projet de Gazoduq », 21 July 2021, **Exh. C-35**.

914 Le Quotidien, « Aucun gazoduc sur le territoire québécois, confirme Legault » (8 September 2022), **Exh. C-00299.**

915 @AShields_Devoir, Twitter account of Alexandre Shields (journalist at Le Devoir), tweet dated 14 September 2021, **Exh. C-36**.

916 @AShields_Devoir, Twitter account of Alexandre Shields (journalist at Le Devoir), tweet dated 14 September 2021, **Exh. C-0036** (English translation from French original: "The Liberal Party of Canada agrees with the Québec Government and does not support this project. It is clear to us that it will not see the light of day").

917 This tweet was reportedly delivered by a Liberal Party of Canada spokesperson, in the midst of a snap Federal election campaign, and has never been disavowed: *see* Le Devoir, «Mises à pied massives chez GNL Québec et Gazoduq » (15 September 2021), **Exh. C-00293**; *see also* La Presse, «O'Toole réitère son appui à GNL Québec et s'attaque aux bloquistes » (15 septembre 2021), **Exh. C-00294**. *See also* Expert Report of Mr. Rodney Northey, 19 November 2023, paras. 40-48, **CER-2**.

918 Expert Report of Mr. Rodney Northey, 19 November 2023, paras. 77-88, 115-126, **CER-2**.

specifically relied upon them to make adverse findings that it would cause "significant adverse environmental effects".[919] As Mr Northey adds:

> Nothing seems to me to be less fair than telling the proponent that the federal environmental assessment does not include a component and then making a decision that relies on this exclusion to reach fundamental conclusions opposing approval of the Port Terminal Project.[920]

625. *Ninth*, Canada further violated due process by simply reiterating the MELCC's approach to global GHG emissions, energy transition and potential marine shipping impacts on belugas[921] without giving GNLQ any chance to respond.[922] On GHG emissions and energy transition, the IAAC's analysis and conclusions draw heavily from the MELCC's findings in its provincial environmental assessment process.[923] On potential shipping impacts on belugas, the final IAAC Report aligned its position with the MELCC to demand that GNLQ avoid shipping altogether rather than accept mitigation.[924] GNLQ was not afforded any fair opportunity to respond to these abrupt changes, which also departed from longstanding Québec and Federal Government policies in favour of LNGs and development of the Saguenay-St Lawrence rivers.

b) Canada's Measures are Manifestly Arbitrary

626. A measure will be "manifestly arbitrary" when it is "evident that the measure is not rationally connected to a legitimate policy objective, such as when a measure is based on prejudice or bias rather than on reason or fact."[925] According to the tribunal in *Cargill v. Mexico*, this includes conduct that moves "beyond a merely inconsistent or questionable application of administrative or legal policy or procedure to the point where the action constitutes an unexpected and shocking repudiation of a policy's very purpose and goals, or otherwise grossly subverts a domestic law or policy for an ulterior motive."[926]

---

919 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, pp. 47, 61.

920 Expert Report of Mr. Rodney Northey, 19 November 2023, para. 113, **CER-2**.

921 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p. 20, 56, 61.

922 GNLQ, Commentaires adressés à l'AEIC, 22 October 2021, p. 1 **Exh. C-00376**.

923 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.47

924 Impact Assessment Agency of Canada, Energie Saguenay Project – Environmental Assessment Report, November 2021, **Exh. C-0037**, p.61.

925 Canada's FIPA, Article 8, footnote 1, **CL-00043**.

926 *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), paras. 291, 293, **CL-00021**.

627. Several aspects Québec Government and the Federal Government's conduct were tainted by manifest arbitrariness, and thus amount to a breach of NAFTA Article 1105(1).[927]

628. *First*, Québec acted in a manifestly arbitrary fashion when, on 24 March 2021, it introduced at the eleventh hour three additional "core criteria" for the approval of the GNLQ Project that had never before been articulated, despite more than five years years of environmental assessment.[928] As Me Duchaine notes in her Report, the new "core criteria" of reducing worldwide GHG emissions and promoting energy transition have never been applied to the environmental assessment of any other project in Québec either before or after the environmental assessment of the GNLQ Project.[929] The arbitrary and haphazard nature of these criteria is underlined by Minister Charette's open admission during the 22 April 2021 meeting with GNLQ representatives that he "did not really know" how the GNLQ Project would be assessed against these supposed "criteria".[930]

629. *Second*, as previously set out with regard to due process, it was manifestly arbitrary for the MELCC to ignore GNLQ's rigorously produced evidence and the conclusions of its own climate experts with regard to the fulfilment of such criteria.

630. *Third*, the MELCC's final environmental assessment report Report's scepticism about the contribution of LNG to the worldwide energy transition also arbitrarily ignored Québec's longstanding position on LNG as a source of energy transition and GHG emission reduction.

631. In its Decision, the Québec Government cited GNLQ's alleged failure to address the last-minute, unprecedented "core criteria" of the Project's projected contribution to global GHG emissions and to the energy transition towards cleaner fuels, as the primary reasons for rejecting the GNLQ Project. This was notwithstanding the evidence and the conclusions from MELCC's own climate change experts demonstrating the Project's compliance even

---

927 *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012), para. 152, **CL-00036**; *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), para. 98, **CL-00040**; *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 November 2000), para. 263. **CL-0007**; *Merrill & Ring Forestry L.P. v. The Government of Canada*, UNCITRAL (ICSID Administered Case), Award (31 March 2010), para. 187, **CL-00028**; *GAMI Investments, Inc. v. The Government of the United Mexican States*, UNCITRAL, Final Award (15 November 2004), para. 94, **CL-00047**; Error! Reference source not found. *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID C ase No. ARB/10/23, Award (19 December 2013), para. 454, **CL-00042**. *See also* Christophe Schreuer, THE FUTURE OF INVESTMENT ARBITRATION (C.A. Rogers, R.P. Alford eds, 2009), p. 190, **CL-00048** ("In a number of cases, Tribunals have dealt with the prohibition of unreasonable or arbitrary measures in close conjunction with the fair and equitable treatment standard. This tendency is particularly pronounced with Tribunals applying the NAFTA. It may be explained, at least in part, by the fact that the NAFTA does not contain a separate provision on arbitrary or discriminatory treatment.").

928 Assemblée Nationale du Québec, « Point de presse de M. Benoit Charette, ministre de l'Environnement et de la Lutte contre les changements climatiques », 24 March 2021, **Exh. C-31**. Minister Charette said: "[i]n fact, we have posed three very clear conditions that are maintained to this day, social acceptability, promoting energy transition and, ultimately, contributing to the global reduction of GHG emissions." (French original : « En fait, on a posé trois conditions très claires qui sont maintenues encore à ce jour, acceptabilité sociale, favoriser la transition énergétique et, ultimement, contribuer aux diminutions mondiales des gaz à effet de serre. »)

929 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 90, 92.

930 Jolyane Pronovost (Tact), Note – Summary of the meeting with the Minister of the Environment and Climate Change (22 April 2021), **Exh. C-00267**. *See* Witness Statement of Tony Le Verger (21 November 2023), paras. 196-198, **CWS-3**.

with these late-announced criteria, and the Québec Government's own support for LNG as an effective transitional energy supply and key contributor to the transition towards greener energy. Just one day before rejecting the GNLQ Project, Québec's Minister of Energy and Natural Resources announced new public funding to extend the province's natural gas pipeline system and declared that: « [l]e gaz naturel est une énergie de transition profitable pour le Québec ».[931]

632. Moreover, as Me Duchaine notes, LNG projects have been assessed and authorised by Québec without the evaluation criteria of "contribution to the worldwide energy transition" ever having being invoked. Much to the contrary, Québec has in case of other LNG facilities such as Rabaska underlined the contribution of the Project to the energy transition. As Me Duchaine notes: "[l]e contraste entre la position officielle du Québec qui écarte les avis de ses propres experts sur la question des GES mondiaux et la décision du gouvernement de refuser le Projet de GNL Québec pour ce motif ajouté tardivement, alors que les autres projets n'ont pas été assujettis à ce critère et qu'ils ont été autorisés nous appert injuste et déraisonnable, voir arbitraire".[932]

633. *Fourth*, the Québec Government's reliance on alleged impacts of navigation on belugas, and the supposed need to impose a related moratorium on GNLQ's chartered ships for much of the year, was also manifestly arbitrary in the context of the exchanges that led up to the MELCC's sudden adoption of a "zero tolerance" approach in 2021.

634. In its first series of questions from May 2019, the MELCC had mentioned merchant ship navigation as one source among others of noise that could impact beluga habitats, and that it could ask for mitigation measures.[933] Virtually none of the MELCC's questions from May 2019 or November 2019 asked GNLQ to implement mitigation measures on noise from merchant ship navigation. As Me Duchaine points out in her Report, while the MELCC claimed to be preoccupied with the issue, it admitted that there was no scientific basis for reaching a conclusion on this alleged risk factor, and that in the meantime its focus was on identifying mitigation measures through relevant bodies and federal authorities.[934]

635. MELCC therefore asked GNLQ to undertake to apply the mitigation measures that would be identified by its partners, and GNLQ accordingly consented. MELCC also asked questions about the sound impact of ships *at dock*, asserting that if a risk had been identified, mitigation measures should be put in place. These exchanges continued through GNLQ's

---

931 Gouvernement du Québec, « Prolongement du réseau de distribution de gaz naturel – Québec investit plus de 1 M$ pour le développement économique en Montérégie » (21 July 2021), **Exh. C-0034** (Translation to English from French original: "Natural gas is a profitable transitional energy for Québec")

932 Expert Report of Me Christine Duchaine, 20 November 2023, p. 91, **CER-1**.

933 MELCC-DEEPHI, Questions et commentaires – 1re série (22 May 2019), Doc. No. PR5.1, QC-102, pp. 31-32, **Exh. C-00204**.

934 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 32-33, **CER-1**.

exchanges with the MELCC, with the latter always focussed on mitigation, and ultimately deeming GNLQ's environmental assessment admissible on 3 February 2020.[935]

636. Suddenly, in March 2021, the MELCC framed noise from navigation as a priority threat to be addressed in relation to belugas.[936] This was notwithstanding the MELCC's admission that scientific research would not produce any actionable knowledge about noise impacts from navigation on belugas for at least a few more years.[937]

637. On 26 April 2021, the MELCC made a new demand regarding maritime transport, disguised as a mere "follow-up" question, asking at the eleventh hour that GNLQ submit additional evidence on all subaquatic noise reduction measures with regard to whose efficacy had already been demonstrated.[938] MELCC made this demand despite not having previously asked a single question about subaquatic noise reduction measures related to maritime transport – its focus had instead been on noise reduction *at dock*.

638. In its June 2021 responses to the MELCC, GNLQ proposed a suite of additional, comprehensive subaquatic noise mitigation measures that its chartered LNG tankers would follow during operations.[939] In its final Environmental Analysis Report of 30 June 2021, the MELCC simpy responded that the *only* effective measure to counter risks posed to belugas by subaquatic noise was "avoidance", *i.e.*, preventing the navigation of *any* LNG tanker for seven out of twelve months each year,[940] arbitrarily ignoring GNLQ's extensive mitigation measures.

639. As Me Duchaine notes in her Report, the manifest arbitrariness of the MELCC's conclusion seeking to impose an effective moratorium exclusively on marine shipping by GNLQ for seven months per year was compounded by the fact that that the province itself had partnered with GNLQ to select the location of the Project.[941] GNLQ had invested substantial time and effort over multiple years without suspecting that the Project was doomed to fail on the basis of this moratorium on shipping the government suddenly imposed.

640. As Me Duchaine notes in her Report, the Government's flat-out refusal of shipping was all the more unreasonable and arbitratry given the number of ships GNLQ would have added:

---

935 MELCC, Avis sur la recevabilité de l'étude d'impact, Doc. No. PR7 (February 2020), **Exh. C-00221**.

936 *See* MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), Doc. No. PR10.7, **Exh. C-00214,** preamble to questions 24, 25 and 26 (no page numbers).

937 *See* MELCC-DEEPHI, Demande d'engagements et d'informations complémentaires – Annexe (3 March 2021), Doc. No. PR10.7, **Exh. C-00214,** preamble to questions 24, 25 and 26 (no page numbers).

938 *See* MELCC-DEEPHI, Addenda à la demande d'engagements et d'informations complémentaires – Annexe (26 April 2021), Doc. No. PR10.9, **Exh. C-00268**, Question 48.

939 *See* GNL Québec, Réponses aux questions et commentaires, Doc. No. PR10.10 (June 2021), **Exh. C-0068**, Answer R-25, p. 27 ; R-48, pp. 56-57, R53, p. 67; Table R-53, p. 72.

940 MELCC–DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, pp. 32-36.

941 Expert Report of Me Christine Duchaine, 21 November 2023, p. 102, **CER-1**.

roughly one ship a day.[942] This compared with an average of a single other ship a day in the Saguenay at the time of the analysis, and twelve per day in the St Lawrence, as well as thousands of other types of ship crossings. The number of ships serving the GNLQ Project was minimal compared with the large number of ships that otherwise use the Saguenay and the St Lawrence, underlining the arbitrariness of applying this targeted moratorium to the GNLQ Project.[943] Moveover, in its analysis, the MELCC referred to a number of projects (Arianne Phosphate, BlackRock and North Shore Terminal) unrelated to the GNLQ Project and which alone could lead to the tripling of ship passage in the Saguenay River, up to 3 a day. Yet, as Me Duchaine notes, all of these projects were authorized, with GNLQ the sole exception.[944]

641. The moratorium targeting GNLQ was all the more arbitrary when considered in the context of Québec's general policy in favour of encouraging shipping traffic on the Saguenay, specific efforts to increase such traffic, and consistent emphasis on mitigation, before and after its decision in the GNLQ Project. Compounded the arbitrariness of the moratorium targeting GNLQ, months later Premier Legault admitted that banning any increase in marine traffic on the Saguenay River did not drive the rejection of the GNLQ Project, and that his Government was open to projects that would involve increased marine shipping from the Saguenay Port:[945]

> Je ne pense pas que c'était la raison essentielle. La raison essentielle, c'est que c'est du gaz, d'abord du gaz qui n'est même pas fabriqué au Québec, qui vient de l'Ouest Canadien, qu'on n'a pas besoin vraiment ici au Québec, donc qu'il faudrait envoyer par bateau éventuellement en Europe. Donc je ne pense pas qu'on puisse associer le refus de GNL avec le fait qu'on va continuer de regarder des projets pour le port de Saguenay.

642. The Québec Government went on to authorize investments worth many millions of dollars to modernize the infrastructure of the Saguenay Port. The Government expressly acknowledged such investments were intended to increase shipping traffic, citing the positive effects this would have on the Province's GHG emission profile.[946]

643. *Fifth*, the MELCC reliance on alleged concerns about social acceptability to deny GNLQ approval was also manifestly arbitrary. As Me Duchaine notes in her report, the requirement of social acceptability underwent a drastic change of course: during the first phase of

---

942 Expert Report of Me Christine Duchaine, 21 November 2023, p. 103. GNLQ later clarified that in terms of marine traffic, it was expected to add up to 140 ships per year on the Saguenay River: *see* Impact Assessment Agency of Canada, North Shore Terminal Project – Environmental Assessment Report, October 2018, pp. 22, 186, **Exh. C-00215**.

943 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 103-104, **CER-1**.

944 Expert Report of Me Christine Duchaine, 21 November 2023, p. 104, **CER-1**.

945 *See* Radio Station CKYK-FM 95.7, "Le show du matin" (radio interview of 19 May 2022), **Exh. C-0033**.

946 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 104-106, **CER-1**.

environmental review process, the MELCC had not sent to GNLQ a single written question concerning social acceptability, which only arose as an additional "core criteria" on 24 March 2021.[947] The MELCC sought to gloss over the last-minute emphasis on social acceptability by asking in its final round of questions whether GNLQ had "anything more to add" on this issue, when in fact it had never raised the issue before. Finally, in its final report of June 2021, the MELCC once again arbitrarily chose to ignore the evidence and data on social acceptability that GNLQ provided, effectively transforming the social acceptability criterion from a rational, evidence-based requirement into a *carte blanche*.

644. *Sixth*, by declaring that the Gazoduq Project "died" together with GNLQ and that there would not be a second BAPE procedure to evaluate the Gazoduq Project, the Québec Government mirrored the manifestly arbitrary conduct it had already meted out to GNLQ.[948]

645. *Seventh*, the Federal Government acted in a manifestly arbitrary manner when it pre-empted its eventual refusal to authorise the GNLQ Project by way of the Liberal Party of Canada announcement in 14 September 2021. The terms of the announcement – *i.e.*, that the Liberty Party agreed with the Québec Government, and that GNLQ would not see the light of day – made it clear that the eventual refusal of the GNLQ Project was politically motivated, rather than based on the merits of the Project itself. As Mr Northey underlines, it was "contrary to the lawful exercise of discretion under the CEAA for the governing political party to [pre-emptively] declare the outcome of the federal environmental assessment prior".[949]

646. The Liberal Party's announcement, reported in a tweet, was never subsequently denied by the Party nor Canada.[950] GNLQ personnel would subsequently confirm that the Federal Government's refusal was manifestly arbitrary and unfair, when they later learned that the decision was motivated by political calculations over the Federal Government not contradicting Québec in the midst of a snap election. As Mr Northey observed, the Federal Government's refusal of GNLQ "also sealed the fate of [Gazoduq]" and "similarly harmed the [F]ederal [environmental assessment process] for [Gazoduq]".[951]

c) Canada's Measures Amount to Unfair Targeting of the Investor

647. In addition to being manifestly arbitrary, the Québec and Federal Government's conduct was not based on legal standards, but on discretion and prejudice.[952] As the tribunal in

---

947 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 117-125, **CER-1**.

948 *See* Radio-Canada, « Rejet de GNL Québec: il n'y aura pas de BAPE sur le projet de Gazoduq », 21 July 2021, **Exh. C-0035**.

949 Expert Report of Mr. Rodney Northey, 19 November 2023, para. 47, **CER-2**

950 @AShields_Devoir, Twitter account of Alexandre Shields (journalist at Le Devoir), tweet dated 14 September 2021, **Exh. C-0036**.

951 Expert Report of Mr. Rodney Northey, 19 November 2023, paras. 72-76, 216, **CER-2**.

952 *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012), para. 152, **CL-00036**; *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), para. 98, **CL-00040**; *GAMI Investments, Inc. v. The Government of the United Mexican States*, UNCITRAL, Final Award (15 November 2004), para. 94, **CL-00047**; *Merrill*

Waste Management noted, "the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct [. . .] is discriminatory and exposes the claimant to sectional or racial prejudice."[953] The tribunal in *Nelson v. Mexico* recently noted that "[s]ubsequent NAFTA tribunals have found, under this standard, that discrimination exists if the State wilfully targets the investor."[954] (our emphasis). For example, in *Cargill v. Mexico*, the tribunal noted that:

> "With respect to Article 1105, the Tribunal finds that Respondent, in an attempt to further its goals regarding United States trade policy, targeted a few suppliers of HFCS [high fructose corn syrup], all but annihilating a series of investments for the time that the permit requirement was in place. The Tribunal finds this willful targeting to breach the obligation to afford Claimant fair and equitable treatment."[955]

648. The conclusion that the fair and equitable treatment provision covers certain forms of "discrimination" (*other* than nationality-based), including targeted discrimination, is echoed by the findings of scholars and the United Nations Conference on Trade and Development (**UNCTAD**).[956] As the UNCTAD study concludes:

& Ring Forestry L.P. v. The Government of Canada, UNCITRAL (ICSID Administered Case), Award (31 March 2010), para. 187; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award (19 December 2013), para. 454, **CL-00042**; *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 November 2000), para. 263, **CL-0007**; *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award (11 October 2002), para. 156, **CL-00036**; *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award (26 June 2003), para. 135, **CL-00049**; *Chemtura Corporation v. Government of Canada*, UNCITRAL, Award (2 August 2010), para. 215 *et seq*, **CL-00050**.

953 *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), para. 98, **CL-00040**.

954 *Joshua Dean Nelson and Jorge Blanco v. United Mexican States*, ICSID Case No. UNCT/17/1, Award (5 June 2020), para. 351, **CL-00055**.

955 *Cargill Inc. v. Mexico*, ICSID Case No. ARB(AF)/05/2, Award, (18 September 2009), para. 2, **CL-00021**. *See also id*., paras. 300, 303, 387, 550. Note that the tribunal in *Glamis Gold v. United States* also made the following distinction between different types of discrimination: "The Tribunal notes that, as exhibited under the NAFTA, there are two types of discrimination: nationality-based discrimination and discrimination that is founded on the targeting of a particular investor or investment". *See Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award (8 June 2009), n. 1087, **CL-00035**. While the *Glamis* tribunal mentioned that nationality-based discrimination "falls under the purview" of the national treatment provision (NAFTA Article 1102), its reasoning suggests that targeted discrimination is covered by Article 1105. *See id*., paras. 22, 24, 616, 627, 762, 765, 776, 779, 788, 824, 828 616. The tribunal also explained the reasons why it examined this discrimination-related allegation in the context of arbitrariness. *See id*., para. 559 and nn. 1087 and 1128.

956 *See, e.g*., Andrew Newcombe & Luis Paradell, LAW AND PRACTICE OF INVESTMENT TREATIES: STANDARDS OF TREATMENT (Kluwer 2009), pp. 289-291, **CL-00051**; Stephen Vasciannie, *The Fair and Equitable Treatment Standard in International Investment Law and Practice* (2000) 70 BRITISH YIL 137, p. 133, ("if there is discrimination on arbitrary grounds, or if the investment has been subject to arbitrary or capricious treatment by the host State, then the fair and equitable standard has been violated"); Barnali Choudhury, *Evolution or Devolution? Defining Fair and Equitable Treatment in International Investment Law* (2005) 6(2) J. WORLD INVEST. & TRADE 297, pp. 313-314, **CL-00052**; Campbell McLachlan, Laurence Shore and Matthew Weiniger, International Investment Arbitration: Substantive Principles (Second Edition, Oxford University Press 2017), § 7.221, **CL-00053**.

> "Tribunals have held that the FET standard prohibits discriminatory treatment of foreign investors and their investments. The non-discrimination standard that forms part of the FET standard should not be confused with the treaty obligation to grant the most favourable treatment to the investor and its investment. While the national treatment and MFN standards deal with nationality-based discrimination, the non-discrimination requirement as part of the FET standard appears to prohibit discrimination in the sense of specific targeting of a foreign investor on other manifestly wrongful grounds such as gender, race or religious belief, or the types of conduct that amount to a "deliberate conspiracy […] to destroy or frustrate the investment". A measure is likely to be found to violate the FET standard if it evidently singles out (*de jure* or *de facto*) the claimant and there is no legitimate justification for the measure."[957]

649. Therefore, to identify whether the State has wilfully targeted the investor, tribunals have considered whether a measure singles out (*de jure* or *de facto*) the claimant, and then then whether a State has any "legitimate justification" for such targeting.[958]

650. In the present case, Québec and Canada have clearly arbitrarily and unfairly targeted GNLQ.

651. *First*, Québec unfairly targeting the Claimant when it deliberately leaked news of the pull-out of a major investor in March 2020, in an effort to kill off a project it had decided was politically risky to it.[959]

652. *Second*, Québec and Canada unfairly targeted the GNLQ Project by singling it out for a uniquely onerous, two level environmental review process, contrary to their own agreement and practice.

653. Me Duchaine and Mr Northey agree that the Canada-Québec Agreement established a default framework for the two jurisdictions to conduct a single environmental assessment process of a project jointly whenever they both "have an environmental assessment

---

957 UNCTAD, *Fair and Equitable Treatment*, 7 (UNCTAD Series on Issues in International Investment Agreements II, United Nations, 2012), p. 82 (internal citations omitted), **CL-00054**.

958 *Joshua Dean Nelson and Jorge Blanco v. United Mexican States*, ICSID Case No. UNCT/17/1, Award (5 June 2020), para. 352, **CL-00055**.

959 [redacted]

responsibility for [that] project" pursuant to their respective environmental laws.[960] This accorded with the principle of 'one project, one assessment'.[961]

654. According to Me Duchaine as well as Mr Northey, both levels of Government failed to apply the Canada-Québec Agreement, and GNLQ became subject to separate and parallel environmental assessments under the MELCC and CEAA 2012 regimes.[962] Given the complexity, costs and the risk of conflicting assessments, this was both grossly unfair and detrimental to GNLQ, which ultimately led to the Québec Government 'prejudging' the Project's fate ahead of the Federal Government's environmental assessment decision.[963]

655. In contrast, the Québec and Federal Governments accorded a number of the identified comparator projects above more favourable treatment by subjecting them to a single, joint and collaborative environmental assessment process only. These include the Cacouna LNG and Rabaska LNG projects, both proposed by Canadian entities, which were similar to the GNLQ Project as they were all concerned with LNG, had shipping elements and would be located in the same Saguenay-St Lawrence region. While Cacouna LNG and Rabaska LNG engaged both the Québec and Federal environmental regimes, the two Governments agreed to constitute joint review panels in conformity with the Canada-Québec Agreement, which collaboratively assessed and ultimately authorised both projects.[964]

656. Similarly, both Me Duchaine and Mr Northey highlighted that the GNLQ Project wa denied the treatment that the North Shore Terminal received when it was subjected to only one environmental process led by the Federal Government under the CEAA 2012 regime. North Shore Terminal, proposed by the SPA (a Canadian Federal enterprise), was similar to GNLQ, as their respective sites were on the opposite shores of the Saguenay River, and their operations entailed a similar volume of shipping.[965] Both Me Duchaine and Mr

960 Canada-Québec Agreement, ss.5(1), 7(1) and 8(1); Expert Report of Me Christine Duchaine, 21 November 2023, p. 66, **CER-1**. p.66 ("Le principe d'un projet, une évaluation est largement appliqué depuis des décennies ... Les droits et obligations respectifs existent depuis longtemps et un promoteur a par conséquent une expectative légitime que les gouvernements vont respecter leur propre Entente. ») ; Expert Report of Mr. Rodney Northey, 19 November 2023, para. 76, **CER-2** (GNLQ "was entitled to a coordinated federal-provincial decision.").

961 See: Government of Canada, "News Release: Backgrounder: Renewal of the Canada- Québec Agreement on Environmental Assessment Cooperation" (25 October 2010), RN-0035-ENG; and Expert Report of Me Christine Duchaine, 21 November 2023, p. 66, **CER-1**.

962 Expert Report of Me Christine Duchaine, 21 November 2023, p. 72, **CER-1**.

963 Expert Report of Me Christine Duchaine, 21 November 2023, p. 75, **CER-1**; Expert Report of Mr. Rodney Northey, 19 November 2023, para. 76, **CER-2**.

964 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 67-69, **CER-1**.

965 Expert Report of Me Christine Duchaine, 21 November 2023, p. 70, **CER-1**; Expert Report of Mr. Rodney Northey, 19 November 2023, para. 73-74, 182, **CER-2**.

Northey agreed that GNLQ was entitled to a single joint and collaborative environmental assessment process.[966]

657. As Mr Northey further emphasized, it was inexplicable that North Shore Terminal, but not GNLQ received the more favourable treatment of a single environmental assessment process, even though both were located on Federal land: "[n]o document in the [IAAC]'s Registry addresses why the North Shore [Terminal] project on federal port lands was subject to [F]ederal [environmental assessment] only in comparison to the [GNLQ Project] also on federal port lands".[967] Ultimately, the single environmental assessment process approved the North Shore Terminal project, whereas GNLQ received a refusal from a flawed procedure characterised by the Québec and Federal Governments' joint failure to collaborate in accordance with the Canada-Québec Agreement.[968]

658. *Third*, As Me Duchaine also adds, the Québec Government's *ultra vires* conduct in refusing the GNLQ Project on the basis of factors knowingly outside of its jurisdiction, amounted to improper targeting of the investor, in that the Québec Government had otherwise time and again recognised and respected the limits of its jurisdiction to engage in environmental review, including in projects similar to GNLQ.[969]

659. *Fourth*, as previously set out with regard to due process, Québec unfairly targeted GNLQ by ignoring its rigorously produced evidence and the conclusions of its own climate experts with regard to the fulfilment of such criteria. As the MELCC's experts noted, it was rather the cumulative effect of all projects that was going to impact on the Province's attainment of its goals.[970] In her expert report, Me Duchaine notes that despite this, the Québec Government authorised other projects both before and after the GNLQ Project that have an impact on GHG emissions without regard to the cumulative effect of such other projects on GHG emissions and without requiring such other projects to demonstrate their respective carbon neutrality.[971] Moreover, all such projects were authorized. The MELCC thus unfairly singled out GNLQ for refusal on the basis of cumulative effects on GHG emissions while refraining from applying such a criterion to other projects.

660. *Fifth*, as Me Duchaine notes, GNLQ was unfairly targeted and subject to discriminatory treatment in that in their conclusions, the MELCC based its refusal on a sudden decision against the allocation of hydro-electricity to the Project.

---

966 Expert Report of Me Christine Duchaine, 21 November 2023, p. 74, **CER-1**; Expert Report of Mr. Rodney Northey, 19 November 2023, para. 76, **CER-2**.

967 Expert Report of Mr. Rodney Northey, 19 November 2023, paras. 73-74, **CER-2**.

968 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 64, 75, **CER-1**; Expert Report of Mr. Rodney Northey, 19 November 2023, paras. 72-76, **CER-2**.

969 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 65, 128, **CER-1**.

970 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, p. 42.

971 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 86-87, **CER-1**.

661. It was notorious that Hydro-Québec has undertaken to allocate significant amounts of hydro-electricity to GNLQ at preferential rates for the purpose of the Project. It would also have been known to the MELCC that the grant of this amount of hydro would be confirmed (and become irrevocable) upon the granting of environmental approval.[972]

662. In its Final Environmental Analysis Report, the MELCC suddenly engaged in an analysis of the "optimal" allocation of Québec hydro resources – something that had never been a criteria in GLNQ's environmental evaluation – and applying its reasoning in this regard as an additional reason to refuse GNLQ environmental approval. The MELCC notably decided, on the basis of no apparent analysis, that the hydroelectricity that the GNLQ Project needed should instead go to other projects that could use it to reduce their own GHG emissions or that were "more promising".[973]

663. By recommending the supply of hydroelectricity in priority to any project other than the GNLQ Project, the MELCC made an eminently discriminatory recommendation in clear violation of prior hydroelectricity commitments specifically undertaken towards GNLQ, while wholly disregarding the GNLQ Project's credible commitment to achieve carbon neutrality. As Me Duchaine concludes, this to amounted to unfair specific targeting of the Claimant (Duchaine, page 82): « Qui plus est, la décision d'écarter ce seul Projet afin d'avoir l'électricité requise pour favoriser d'autres projets « plus prometteurs pour le Québec » est éminemment discriminatoire. »[974]

664. *Sixth*, as Me Duchaine notes, Québec has never adopted the criteria of "favouring the reduction of GHG on a worldwide scale and of favour the worldwide energy transition", applied to GNLQ to deny approval, to any other project under a Québec environmental assessment. This is a criterion that has been applied only once: against the GNLQ Project.[975]

665. *Seventh*, the Québec Government unreasonably targeted GNLQ in respect of its approach to belugas. As Me Duchaine demonstrates, it adopted a drastically different approach regarding shipping for other projects with similar impacts. In the case of Arianne Phosphate, Québec simply deferred to the Federal Government with regard to shipping impacts, refusing to include this issue within the scope of its analysis.[976] In the case of Stolt LNGaz, Québec simply acknowledged that "*le transport maritime n'est pas une activité assujettie à la Procédure d'évaluation et d'examen des impacts sur*

---

972 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 87-88, **CER-1**.

973 MELCC-DGEES, Environmental Analysis Report, Doc. No. PR11 (30 June 2021), **Exh. C-00269**, pp. 45, 47, 75-76.

974 Expert Report of Me Christine Duchaine, 20 November 2023, p. 88.

975 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 90, 92.

976 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de mine d'apatite du lac à Paul sur le territoire non organisé Mont-Valin par Arianne Phosphate Inc., Dossier 3211-16-007, 9 février 2016, pp. 60-61 (iManage Doc. No. 3835796).

l'environnement".[977] In a fuel supply project proposed by the Corporation Internationale d'Avitaillement de Montréal, the MELCC focussed on risk rather than maritime traffic management, and ultimately determined that the proposed mitigation measures were acceptable[978] – in other words, achieving a substantially different outcome despite the same issues being at play.

666. In Rabaska LNG there was a joint assessment process, with the Federal Government feeding in information on aspects not within provincial competence. The project was authorized without restriction on maritime transport.[979] In Énergir, an LNG project for servicing the Saguenay industrial and port zone, there were significant effects on waterways and wetlands. Although this project was situated in a port zone, the environmental assessment made no mention of its impacts on navigation on the Saguenay river, and approved the Project without any restrictions in this regard.[980]

667. As for BlackRock, the MELCC sought and obtained the proponent's undertakings with regard to impacts of navigation on belugas. Notably, First Nations communities would participate in the committee charged with monitoring the operation of the plant. The MELCC noted that the proponent had undertaken to consider mitigation measures to reduce sound. Ultimately, the authorisation for BlackRock made no mention of belugas, and confirmed the project's environmental acceptability.[981] As Me Duchaine notes, BlackRock and GNLQ's evaluation proceeded in parallel, but received drastically different treatment, both in terms of requirements imposed and in terms of outcomes based on the same criteria.[982]

668. In the case of the Cacouna LNG project, the environmental evaluation proceeded on a joint federal-provincial basis. Mitigation measures regarding potential navigational impacts were proposed, and deemed acceptable.[983] By contrast – reflecting the deliberate negative targeting of GNLQ with respect to this issue – GNLQ was not only denied a joint assessment process, but Québec's analysis of navigation and beluga issues rejected GNLQ's mitigation measures even though they were more extensive.

669. Overall, Me Duchaine concluded that an examination of this issue showed that GNLQ was targeted with drastically different and far more negative treatment with regard to belugas,

---

977 MELCC-DGEES, Rapport d'analyse environnementale pour le projet de construction d'une installation de liquéfaction de gaz naturel sur le territoire de la ville de Bécancour par Stolt LNGaz Inc., Dossier 3211-10-018, 6 août 2015, p.14, available here.

978 Expert Report of Me Christine Duchaine, 21 November 2023, p. 109, **CER-1**.

979 Expert Report of Me Christine Duchaine, 21 November 2023, p. 110, **CER-1**.

980 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 110-111, **CER-1**.

981 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 111-113, **CER-1**.

982 Expert Report of Me Christine Duchaine, 21 November 2023, p. 113, **CER-1**.

983 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 114-116, **CER-1**.

without any justification, and notably with regard to the following elements: 1° recourse to a collaboration agreement with the federal government to engage in a joint environmental review; 2° MELCC's decision to engage in an analysis relating to the impacts of navigation and in particular belugas, despite admitting that these issues are within federal jurisdtion; 3° the imposition of a unique moratorium on GNLQ with regard to passage of ships from May to October; 4° the rejection of the efficacy of any type of mitigation measure; and finally 5° the refusal of authorisation on this basis.

670. *Eighth*, at the Federal level, Mr. Northey made a number of findings demonstrating how the IAAC unfairly targeted the GNLQ Project on the issues of GHG emissions and shipping.

671. On GHG emissions, even though the EIS Guidelines did not require GNLQ to address the issue, GNLQ was the only one to be criticised as an obstacle to energy transition. Mr Northey adds in this regard that among GNLQ's comparator LNG projects, no others were required to consider "the question of emissions in markets that would receive the LNG shipped from Canada"[984]

672. The targeting of GNLQ becomes all the more apparent when the GNLQ Project is compared with other LNG projects subject to Federal environmental assessment. Having received all projects assessed under the CEAA 2012 regime, Mr Northey highlights that the GNLQ Project "received uniquely negative treatment" for its GHG emissions, as it was the only LNG facility not to receive Federal approval. This occured in a context where the Federal Government has authorized LNG projects (such as LNG Canada and Pacific NorthWest) with much higher levels of operational GHG emissions, "by a factor of eight to nine times greater".[985]

673. On marine shipping, Mr Northey finds that the Federal Government's assessment of GNLQ's shipping figures to be uniquely unfair, because it had previously deemed the same volume of marine shipping by the nearby North Shore Terminal to be acceptable.[986] In particular, he noted that while the two projects were assessed under the same CEAA 2012 regime around the same time, there was no discernible evidence or justification for authorising the North Shore Terminal Project while refusing the GNLQ Project:

> "the [IAAC] has not made clear what additional information [it] had before it in 2021 on shipping volumes or beluga whales to warrant [its] change in position. The total number of ships associated with the [GNLQ Project] went from an estimate of 160 ships in the 2018 North Shore [Terminal Environmental Assessment] Report to an estimate of between 140-165 ships per year in the 2021 [GNLQ Environmental Assessment] Report … The Agency's lack of

984 Expert Report of Rod Northey, paras. 132-133.

985 Expert Report of Rod Northey, paras. 165-170, 178-179.

986 Expert Report of Rod Northey, paras. 193-196.

transparency in this regard was unfair. The Agency did not treat like projects the same way".[987]

d) Canada Violated the Claimant's Legitimate Expectations

(i) Legitimate expectations are a relevant factor in assessing a violation of the right to Fair and Equitable Treatment under NAFTA Article 1105(1)

674. In determining the Respondent's breaches of Article 1105 of the NAFTA, it is relevant that Canada repudiated the legitimate expectations upon which the Claimant reasonably relied in order to make and pursue the Project between 2013 and 2022. Those legitimate expectations were based on clear and explicit representations made by officials of the Québec and Federal Governments.

675. NAFTA tribunals have time and again acknowledged that a responding State's violation of an investor's legitimate expectations will be a "relevant factor" in assessing whether a measure amounts to a breach of the fair and equitable treatment standard under Article 1105.

676. In *Waste Management v. Mexico*, the tribunal noted that "[i]n applying [the fair and equitable treatment standard under Article 1105] it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant."[988] Notably, the tribunal in *BG Group v. Argentina*, the arbitral tribunal adopted the reasoning of the *Waste Management* tribunal in concluding that "commitments to the investor are relevant to the application of the minimum standard of protection under international law."[989]

677. In *Thunderbird v. Mexico*, the arbitral tribunal also held that legitimate expectations are a relevant factor in assessing a breach of the standard of fair and equitable treatment under NAFTA Article 1105:

> "Having considered recent investment case law and the good faith principle of international customary law, the concept of "legitimate expectations" relates, within the context of the NAFTA framework, to a situation where a Contracting Party's conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct, such that a failure by

---

987 Expert Report of Rod Northey, para. 193**, CER-2**.

988 *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004), para. 98, **CL-00040**.

989 *BG Group Plc. v. The Republic of Argentina*, UNCITRAL, Final Award (24 December 2007), para. 294, **CL-00056**. While the claimant in this dispute argued that the treaty in question provided a "more generous independent standard of protection", the *BG Group* tribunal did not consider it necessary to address in light of the facts in issue, and therefore was focusing its remarks specifically on the international minimum standard. *See id*., para. 291.

> the NAFTA Party to honour those expectations could cause the investor (or investment) to suffer damages."[990]

678. Similarly, the tribunal in *Glamis Gold v. United States* went further than that, holding that a breach of an investor's legitimate expectations could constitute a breach of Article 1105(1),

> "where a Contracting Party's conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct. In this way, a State may be tied to the objective expectations that it creates in order to induce investment."[991]

679. For its part, the tribunal in *Mobil Investments v. Canada*, held that in order to establish a breach of Article 1105, an investor bears the burden to establish that there were clear and explicit representations made by the State to an investor that were reasonably relied on by the investor and subsequently repudiated.[992]

680. In any event, it stands to reason that a determination of what is "fair and equitable" in any given dispute between a foreign investor and a governmental authority is an inherently fact-specific enquiry which requires an examination of all the relevant circumstances of each case, including the legitimate expectations that the host State may have created on the part of the investor. As noted in *Bilcon v. Canada*,

> "[t]he formulation [of Article 1105] recognises the requirement for tribunals to be sensitive to the facts of each case, the potential relevance of reasonably relied-on representations by a host state, and a recognition that injustice in either procedures or outcomes can constitute a breach." (Emphasis added.)[993]

681. The Claimant also notes that in recent years Canada has acknowledged the relevance of legitimate expectations when considering a breach of the standard of fair and equitable treatment. Thus, in *Windstream v. Canada* the Respondent also accepted that a breach of "clear and explicit representations made (…) in order to induce the investment" could be a

---

990 *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Arbitral Award (26 January 2006), para. 147, **CL-00057**.

991 *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award (8 June 2009), para. 621, **CL-00035**, citing *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Arbitral Award (26 January 2006), para. 147.

992 *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012), paras. 152, 154, **CL-00036**.

993 *See also William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, UNCITRAL, Award on Jurisdiction and Liability (17 March 2015), paras. 444-454, **CL-00024**.

"relevant factor" in assessing whether a measure amounts to the type of egregious behaviour prohibited by the customary international law minimum standard of treatment".[994]

682. In this regard, the Claimant notes that in recent years, Canada has concluded international investment agreements which provide a treaty-specific formulation of the meaning of "fair and equitable treatment" and "minimum standard of treatment". In previous cases under the NAFTA, Canada has relied upon the special language found in subsequent investment treaties as "useful guidance" for NAFTA Chapter 11 arbitral tribunals.[995]

683. To be clear, the Claimant does not accept that Canada's various approaches as to the meaning of "fair and equitable treatment" and "minimum standard of treatment" are relevant to the present dispute. As a matter of treaty law, such treaties should not and cannot take precedence over the actual text of the NAFTA. The interpretation of the relevant provisions of the NAFTA must conform to the customary rules of treaty interpretation, codified in Articles 31 to 33 of the Vienna Convention on the Law of Treaties, which are based on the terms of the applicable legal instrument.

684. Besides, the Claimant notes that in recent treaty practice, Canada has expressly acknowledged the role of legitimate expectations in the determination of a breach of the standard of "fair and equitable treatment". For example, Article 8.10, paragraph 4, of the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part (**CETA**), provides that:

> "When applying the above fair and equitable treatment obligation, the Tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated."[996]

685. It follows that in determining a violation of NAFTA Article 1105, the Tribunal should take into account, as relevant factors: **(i)** the extent to which the Respondent made explicit and consistent representations to the Claimant and Symbio in order to induce the investment; **(ii)** the extent to which the Respondent's conduct created reasonable and justifiable expectations on the part of the investor to act in reliance on said conduct; and **(iii)** the extent to which the Respondent repudiated or acted against those objective representations.

---

994 *Windstream Energy, LLC v. Government of Canada*, UNCITRAL, Government of Canada, Rejoinder Memorial (6 November 2015), paras. 208-209, **CL-00045**.

995 *See, e.g., Windstream Energy, LLC v. Government of Canada* (UNCITRAL), Government of Canada, Counter-Memorial (20 January 2015), para. 475, **CL-00058**.

996 Comprehensive Economic Trade Agreement, Chapter 8: Investment, Article 8.10, available online at <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/08.aspx?lang=eng>

(ii) The Respondent's Consistent Conduct and Support Created Reasonable and Legitimate Expectations on the Part of the Claimant and Symbio

686. Between 2013 and 2020, Québec and Federal Government officials and local authorities made explicit and consistent representations of support and encouragement towards the Claimant and Symbio, inducing them to make significant investments in the Project (1).

687. At the same time, Québec and Federal Government officials made a series of representations directly to GNLQ (but also to the wider public) that they considered natural gas to be a "transitional source of energy", and that they considered GNLQ's business model to be aligned with the Government's policy to reduce GHG emissions by displacing coal and oil with low-carbon natural gas in other countries (2).

688. Similarly, Québec and Federal Government officials created the legitimate expectation on the part of the Claimant and Symbio that the increased maritime traffic that would result from the operation of the GNLQ's export terminal was consistent with the Government's policy for the economic development of the Port of Saguenay, whereas any impact on marine mammals that could arise therefrom could effectively be managed through reasonable and appropriate mitigation measures (3).

(1) Through consistent statements of encouragement and material expressions of support between 2013 and 2020, Québec and Federal Government officials encouraged Symbio to invest in the Project

689. Starting from 2013 and through 2021, the Provincial and Federal Governments repeatedly and consistently encouraged the Claimant to invest significant amounts of money into the Project through a series of promises, specific representations and tangible expressions of support. These representations took several forms at the local, provincial and federal level.

(a) Early on, local, provincial and federal government officials expressed their support for the Project

690. At the earliest phase of the Project, in October 2013, Jim Illich and his team travelled to the Saguenay in order to gauge the political support for the Project with local stakeholders and government officials. During his first meetings with the SPA – which is a federal body[997] — Jim Illich met with the President and General Director of the SPA and other members of the SPA Administrative Council, who were impressed by the attributes of the Project and were elated by the proposal to construct a liquefaction plant in the Saguenay.[998]

---

997 The SPA is an autonomous federal public enterprise incorporated under the Canada Marine Act in 1999. It is one of the 17 Canadian Port Authorities recognized for its strategic importance and its contribution to the country's economy. *See* Port Saguenay, "Saguenay Port Authority", **Exh. C-00377**.

998 Witness Statement of Jim Illich (21 November 2023), paras. 37 to 39.

691. In December 2023, Jim Illich and his team also presented their project concept to Mayor of Saguenay City and the President of Promotion Saguenay Inc. (the economic development arm of Saguenay City), who also expressed enthusiastic support for the Project.[999] In December 2013, Jim Illich and his team also met with the President of the Treasury Board and the Minister responsible for the Saguenay–Lac-Saint-Jean region, as well as Government House Leader, who were both positive and supportive of the GNLQ Project.[1000]

692. In those meetings, representatives of the local, federal and provincial government expressed their support for the Project and encouraged the Claimant to invest. As noted by Jim Illich:

> "Our overall impression from those meetings with local, federal and provincial officials was that everything was very positive. The Government was focused on developing the Saguenay region, and wanted the fjord to become a conduit to the world in terms of trade and growth. Senior political figures in the Saguenay told us that they wanted our Project because it would bring growth and technological innovation, and would give reasons to young people to stay. They were keen on creating new job opportunities that could keep the people there, and saw a parallel between us and a recent successful project sponsored by Rio Tinto. Local officials were confident they could repeat the same model, creating opportunities for young people."[1001]

693. The strong level support towards the Project was not limited to mere rhetoric from local politicians. On the contrary, government representatives demonstrated their support in tangible ways that would enable the Project to materialize. [redacted]

694. [redacted]

---

999 Witness Statement of Jim Illich (21 November 2023), paras. 40 to 42.

1000 Witness Statement of Jim Illich (21 November 2023), para. 47.

1001 Witness Statement of Jim Illich (21 November 2023), para. 48.

1002 Witness Statement of Jim Illich (21 November 2023), paras. 49 to 51. *See also* [redacted]

1003 *Id.*

[redacted]

695. It was therefore reasonable for Symbio to form the legitimate expectation that the Project enjoyed the support from local, provincial and governmental authorities from the get-go.

(b) Québec Government officials repeatedly expressed their support for the Project

696. These expressions of support intensified through the years and across administrations.

697. Between 2014 and 2018, the Government of Premier Couillard repeatedly expressed his specific support for the GNLQ Project in public fora, describing the Project's consultation efforts as "exemplary".[1007] In a meeting between Jim Illich and Prime Minister Couillard in May 2015, the latter assured Jim Illich that "the government will do its best to make sure everything goes smoothly (on what they have control upon)", and that the deliverance of the environmental permits would not be "politically driven".[1008]

1004 Witness Statement of Jim Illich (21 November 2023), paras. 52-53, **CWS-1**

1005 Witness Statement of Jim Illich (21 November 2023), paras. 53-54, **CWS-1**. [redacted] This was strong evidence of the terrific support and validation of our Project by multiple levels of government."

1006 Witness Statement of Jim Illich (21 November 2023), para. 51, **CWS-1**.

1007 *See, e.g.* Radio-Canada, « Philippe Couillard fait son bilan de 2015 pour le Saguenay-Lac-Saint-Jean », 21 December 2015, **Exh. C-23**. *See also* Witness Statement of Jim Illich (21 November 2023), para. 129, **CWS-1**. *See also* Energie Saguenay, "LNG Project Overview of Environmental Permitting and other Key Quebec Government Approvals", 26 September 2017, Exh. **C-00378**, p. 2 ("A positive outcome of this public consultation process is that Philippe Couillard, the Premier of Quebec, has publicly made positive comments on the radio and on TV about the thoughtful, engaging process put in place by GNLQI in order to gain public acceptance and support. . . the Quebec Government have supported the Project over time. This support has included the Quebec Government's support in providing the Project a 15-year tax holiday and confirmation of a dedicated power block of 550 MW of hydropower to meet the project's power requirement.")

1008 *See* Witness Statement of Jim Illich (21 November 2023), para. 129, **CWS-1**. *See also* Contemporaneous notes following meeting with Premier Couillard and Minister Arcand, 20-21 May 2015, **Exh. C-00378**

698. These expressions of support quickly became specific promises and reassurances that would enable the Project to become a commercial success. To give but a few examples:

a. In October 2014, the Quebec Ministry of Economy, Innovation and Exports created an Inter-Ministerial Steering Committee to shepherd the GNLQ Project through the various stages of provincial approval process.[1009]

b. In July 2015, the Québec Government secured a significant amount of hydroelectricity for the GNLQ Project. Specifically, the MERN confirmed that Hydro-Québec would supply a block of 550MW of energy for 20 years at a competitive rate (subject to necessary permits and tariff negotiations).[1010] HQ, which is one of the largest hydropower producers in the world, would provide GNLQ with the ability to power its planned LNG plant entirely with renewable energy. To that end, in November 2018 GNLQ signed a pre-project agreement with HQ for a high-voltage supply of the 550MW power block.[1011]

c. In June 2016, the Ministry of Finance provided GNLQ with a provisional certificate that GNLQ would qualify for a tax-break as a "major investment project".[1012]

d. In August 2016, the Québec Government also made several commitments to support the GNLQ Project economically:

i. *First*, it undertook to provide GNLQ significant tax incentives to encourage its investment, including a multi-year provincial income tax holiday and an exemption of employer social and health contributions for a period of up to 15 years from the launch of the Project's operations and linked to the pursuit of the Project.[1013]

ii. [redacted]

1009 Letter from Joceline Dumas to Michel Gagnon, dated 24 November 2014, **Exh. C-00151**.

1010 *See* Letter from MERN dated 23 July 2015 confirming that, in light of the Planning Study of September (which evaluated GNLQ to be CAD$ 7 million), HQ would supply a block of 550MW of energy for 20 years (subject to necessary permits and tariff negotiations, **Exh. C-00182**.

1011 This agreement included the steps required for HQ to obtain permits and finalize the detailed engineering required to connect HQ's existing infrastructure to the GNLQ plant.

1012 Letter from Deputy-Minister of Finance Luc Monty to Michel Gagnon (6 June 2016), **Exh. C-00380**.

1013 [redacted]

[redacted]

iii. *Third*, the Québec Government undertook to provide financial assistance for employee training purposes.[1015]

iv. *Fourth*, the Québec Government committed to establish a timetable in order to carry out the environmental assessment and review.[1016]

699. The Québec Government's interest to invest in the Project was yet another confirmation that the Province supported the Project. During that time, Jim Illich had meetings with Premier Couillard and Québec Minister of the Economy Dominique Anglade, both of whom expressed their support for the Project.[1017] At the same time, IQ conducted thorough due diligence through its financial advisors, [redacted]

700. Ultimately, the Couillard Government [redacted][1019] [redacted] the Québec Government continued to express support for the Project and specifically encouraged further investments in the Project. [redacted] Importantly, the Québec Government even made specific representations to other interested investors (who invested in the Project), such as Chinese company CITIC:

> "Even though this was disconcerting to us [redacted], they [*i.e.*, the Government] made investors feel comfortable that they would not pull the rug out from under the Project again. I know that at

1014 *Id.*

1015 *Id.*

1016 *Id.*

1017 Witness Statement of Jim Illich (21 November 2023), para. 168**, CWS-1**.

1018 [redacted]

1019 Witness Statement of Jim Illich (21 November 2023), paras. 162 *et seq.* **CWS-1.**

1020 [redacted]

> that time Jim Illich and Michel Gagnon – and even CITIC – had discussions with high levels of government who kept telling them that there was nothing to be concerned about: *they kept repeating that out of the last 20 major environmental assessments in the Province of Québec, only one had been rejected—and that was because of the moratorium on uranium*. I also know that, in a phone call between the Government and CITIC, the government noted that proponents simply 'need to meet clearly defined standards' and stated there was 'no room for arbitrary decisions in this [permitting] process': the Environmental Ministry did not have 'emotions on the project, only standards and whether or not a project can meet those standards.' The Government confirmed to CITIC that it 'really need[ed] and support[ed]' the Project and that it remained 'supportive' of it, in light of its magnitude for the region, regional economic benefits, trade balance benefits and the importance to electricity customers. These continued expressions of support encouraged us to pursue the development of the Project into the fourth round of investment."[1021] (Emphasis added, internal references omitted.)

701. Thus, not only was the Government expressing support for the Project, it also was making specific representations regarding the likely outcome of the environmental review, repeating that 19 out of 20 major projects had been approved.[1022] The Project was able to corroborate these statements through the research of its own environmental permitting consultant.[1023]

702. These representations are entirely consistent with the findings in the Duchaine Report, that 99% of the large-scale industrial projects that have been the subject of an environmental review process in southern Québec have been approved over the last 30 years, the remaining 1% concerning primarily residual waste disposal:

> « Notre révision des projets assujettis [au Processus d'évaluation et d'examen des impacts sur l'environnement] en vertu de la [Loi sur la qualité de l'environnement] nous amène à conclure que les refus d'autorisation de projet par le gouvernement sont très rares. Il ressort plutôt que le gouvernement et le Ministre collaborent habituellement avec les promoteurs afin d'apporter les ajustements requis pour permettre à leurs projets d'aller de l'avant. . . . sur plus de 800 projets soumis à l'ÉEIE applicable au sud du Québec depuis 1994, outre le Projet GNL Québec, il n'y a eu que 7 refus, tous émis avant 2010. Des 7 refus, 6 concernent des lieux

---

1021 *See* Witness Statement of Vivek Bidwai (21 November 2023), para. 168.

1022 *Id*."

1023 *Id*. *See also* Énergie Saguenay LNG Project - Third Round Financing – Status Update and Scenario Overview, **Exh. C-00381**, p. 3 ("In the past decade, 19 major projects have gone through Quebec's environmental assessment (with GNLQI's project and a one other mining project currently both in progress). All but one of these projects (which was rejected in parallel with a moratorium on uranium mining) has been approved under Quebec's environmental assessment process, including a recently proposed $2 billion fertilizer plant which was expected to emit more than twice the greenhouse gas emissions relative to GNLQI's conservative assumptions. It is also noteworthy to mention that Quebec's Environmental Assessment process has recently led to approvals and environmental permits for two new LNG receiving terminals and one micro-scale LNG liquefaction terminal (none of which were ultimately constructed, for commercial reasons)."

> d'élimination de matières résiduelles qui ont été émis entre 1995 et 2009, soit pendant le moratoire imposé par le gouvernement. »[1024]

703. The Government's positive reassurances continued through to the provincial elections of October 2018, which resulted in the victory of Premier Legault. In just over a month since his election, Premier Legault expressed a strong interest in the Project, and even proposed to meet with Jim Illich and Jim Breyer at the World Economic Forum in Davos, Switzerland.[1025] According to Jim Illich:

> "We met with Premier Legault and his team in Davos on 24 January 2019. The meeting was extremely positive, and sealed the new Government's support for our Project in the strongest possible terms. Premier Legault, Minister Fitzgibbon, and the CEO of IQ were all very enthusiastic about the Project, which seemed to "tick all the boxes" for the Government. Premier Legault even expressed interest in investing in Symbio, telling me: "*you need a Québec investor, and that will be us!*" He also stated that the Government would help streamline the environmental approval process. As a token of their support, Premier Legault tweeted a photo which was taken during our meeting with a positive note".[1026]

704. [redacted]

1024 Expert Report of Me Duchaine, p. 47, **CER-1**.

1025 *See* Witness Statement of Jim Illich (21 November 2023), paras. 132-134**, CWS-1**.

1026 *See* Witness Statement of Jim Illich (21 November 2023), para. 135 (internal references omitted), **CWS-1**.

1027 *See* Witness Statement of Jim Illich (21 November 2023), paras. 187-188**, CWS-1**. [redacted]

1028 [redacted]

1029 [redacted]

1030 [redacted]

705. The support by the Québec Government continued up to early 2020. In 16 January 2020, Jim Illich met with Premier Legault, in connection with the anticipated investment in the Project by [redacted].[1031] The Premier posted a photograph of the meeting on Twitter, singing the praises of GNLQ: shortly after the meeting, Premier Legault issued a statement stating that the GNLQ Project "would create 4,000 jobs during construction and 250 permanent jobs per year at 100,000 $ per year".[1032]

706. Viewed as a whole, these continued, specific and sustained expressions of support by the Québec Government created the legitimate expectation that the Project was aligned with the Government's environmental and economic policies. As noted by Jim Illich:

> "All of this mattered to us, and to our investors. We honestly believed that these supportive public statements, alongside the Government's tangible offer to invest [redacted] in our Project—after seven months of extensive due diligence by its specialized investment arm—were compelling evidence that the Government supported the Project. I cannot possibly think that a government would be prepared to make such comments and commit [redacted] to a Project that it considered to be incompatible with the environmental policies which it had expressly proclaimed and adopted. Our impression further was bolstered by the multiple gestures made by the Government in its previously-issued integrated letters of support to support the Project, as well the repeated assurances and representations that were made to me in the course of private discussions by senior politicians at the local, Provincial and Federal level."[1033]

707. Through these specific supportive statements, representations, promises and financial arrangements, Symbio was repeatedly induced to invest significant capital in the Project.

(c) Federal Government officials repeatedly expressed their support for the Project

708. These expressions of support were mirrored by the strong support of the Federal Government and parallel statements from Federal Government officials.

709. As early as 27 August 2015, the NEB approved the Project's export license application.[1034] The Governor-in-Council approved the license on 20 May 2016 and the NEB issued the

---

1031 *See* Witness Statement of Jim Illich (21 November 2023), paras. 138-139**, CWS-1**.

1032 *See* Radio-Canada, « François Legault rencontre GNL Québec et vante le projet Énergie Saguenay », 16 January 2020, **Exh**. **C-0026**. (in the original French text: un projet qui « créerait 4000 emplois durant la construction et 250 emplois permanents à 100 000 $ par année » and « réduirait les gaz à effet de serre de 28 millions de tonnes en remplaçant des centrales au charbon »).

1033 Witness Statement of Jim Illich (21 November 2023), para. 191**, CWS-1**.

1034 National Energy Board, Letter Decision, "GNL Québec Inc. 27 October 2014 Application for a Licence to Export Gas as Liquefied Natural Gas" (August 2015), **Exh. C-0109**, p. 6, Appendix I, points 1-4,. In the statement of reasons, the NEB

license on 26 May 2016.[1035] This was a major milestone for the Project, "as it demonstrated the significance of the Project in the eyes of the regulators, as well as the support coming from the federal government."[1036]

710. At the same time, Federal Government officials expressed their strong support for the Project.[1037] To give but a few examples, on 20 September 2017 Jim Illich met with Federal Minister Champagne, in the presence of other top local politicians of the Saguenay who indicated their strongest support for our Project.[1038] The Minister offered "all his support" in developing this Project, and his enthusiasm led him to make the comment that he would be Symbio's "LNG marketing manager",[1039] proposing nine ways that he and his team could assist GNLQ with LNG buyers abroad, including by utilizing the "whole Global Affairs network, including embassies and consulates" and "leveraging 161 Canadian Gov[ernmen]t offices globally" to support us with securing offtake agreements and financing.[1040] Consistent his Minister Champagne's promise, over the next years the Project's Commercial Development team engaged with over 35 Canada's Trade Commissioners abroad, as well as Québec's Regional Bureau in Beijing, all of whom introduced the Project to major off-takers and interested commercial counterparts in Europe and Asia.[1041]

---

concurred with Navigant's market analysis, and affirmed that the gas resource base in Canada is sufficiently large to accommodate both the Canadian demand and the LNG exports proposed in GNLQ's application. *Id.*, p. 4.

1035 National Energy Board, Licence GL-317 (26 May 2016), **Exh. C-0110**.

1036 Witness Statement of Vivek Bidwai (21 November 2023), para. 74, citing GNLQ, Quarterly Status Report (1 January 2016), **Exh. C-0107**, p. 2.

1037 Witness Statement of Jim Illich (21 November 2023), paras. 141-152**, CWS-1**.

1038 Witness Statement of Jim Illich (21 November 2023), paras. 145-147**, CWS-1**. *See also* contemporaneous account of the meeting, « Rencontre Ministre François-Philippe Champagne, Ministre du Commerce international,20 septembre 2017, 15h30 pour 40 minutes », **Exh. C-00383**. The meeting was also attended by Denis Lemieux, Député de Chicoutimi-Le Fjord (Libéral Fédéral), Alex Corbeil, conseillère (en remplacement de Sylvain Bédard) and Sara Wilshaw, Directeur général Amérique du Nord, Affaires mondiales Canada.

1039 *Id.*, pp. 1-2.

1040 *Id.*, pp. 2-3. 1. More specifically, he offered to: (1) Introduce me and GNLQ to the heads of both CCC and EDC; (2) Ask his department and specifically the regional desks for Asia and Europe to work with GNLQ; (3) Include me and GNLQ in all trade missions to countries that are potential clients – starting with Argentina to which he was travelling to in the next weeks; (4) Personally introduce me to Mr. Cho (sp) (Former Korean and ex-CEO of KoGas) and arranging a dinner with Cho in Seoul; (5) Introduce us to other LNG Buyers/ key clients. Notably, Sara Wilshaw mentioned that the Government could persuade countries like India to commit to long term contracts necessary for Project Financing; (6) Introduce us to major investors such as Middle east fund –Mubadala; (7) Leveraging 161 Canadian Govt offices globally; (8) Personally make any introduction, call, push or nudge to any foreign government that might be a clients or investor; (9) Working hand in hand with the Québec Govt regarding our Government-to-Government strategy with LNG buyers the highest levels, in order to orchestrate meetings and strategies to support our for offtake and investment strategies, and support us in securing binding offtake agreements.

1041 Witness Statement of Vivek Bidwai (21 November 2023), para. 145.

711. At the same time, the Government of Alberta expressed strong interest and support in the Project. The Alberta Government not only considered the possibility of investing in the Project, but also made a series of commercially-substantial offers in terms of [redacted],[1042] and even granted Gazoduq a Can$ 1.9-million grant based on the innovative, carbon neutral design for the pipeline.[1043]

712. Viewed as a whole, these statements, representations and commitments by different governmental entities in Canada made clear that the Project enjoyed the strong possible form of political support at the local, provincial and federal level. As Jim Illich notes:

> "This kind of high-level political support was key to providing us the confidence we needed to pursue the Projects and continue investing in the Projects. Without such clear expressions of support, we would not have pursued our investment over such a long period of time, committing considerable capital, resources, personal time and efforts."[1044]

713. As the Duchaine Report also notes:

> « L'option de bail qui implique qu'un transfert de terrain de la Ville de Saguenay démontre un intérêt réel pour le Projet, et crée une expectative légitime. Notons que les engagements d'Hydro Québec et l'option de location avec le Port de Saguenay portent les signatures de plusieurs ministres. Également, la réserve faite par Hydro-Québec d'un bloc de 550 MW démontre l'appui du gouvernement pour le Projet. »[1045]
>
> « Pour les raisons plus amplement détaillées, nous sommes d'avis que les statistiques sur les projets assujettis à l'ÉEIE, l'accueil favorable du gouvernement au Projet dès le début du processus et la collaboration continue qui a marquée l'élaboration du Projet, notamment dans le choix de sa localisation et dans la disponibilité de l'énergie requise pour sa réalisation, justifient que GNL Québec était légitimement en droit de s'attendre à ce que le MELCCFP collabore pour que son Projet soit autorisé et puisse aller de l'avant à la fin du processus d'ÉEIE, puisqu'il s'agit de la façon de faire et de l'issue habituelle, le tout sous réserve de modifications raisonnables pour assurer son acceptabilité environnementale. » [1046]

1042 *Id.*, paras. 201-209.

1043 *Id.*, para. 205. *See also.* ERA, "Investment in New Technologies Aims To Reduce Pipeline Emissions" (4 February 2021), **Exh. C-00384**.

1044 Witness Statement of Jim Illich (21 November 2023), para. 152, **CWS-1**.

1045 Expert Report of Me Duchaine, p. 20, **CER-1**.

1046 Expert Report of Me Duchaine, pp. 46-47, **CER-1**.

(2) Québec and Federal Government officials created the legitimate expectation that natural gas is a transitional source of energy that can contribute to the reduction of GHG emissions

714. In addition to these consistent expressions of support, the Federal and Québec Government made a series of representations directly to GNLQ and to the public that it considered natural gas an important element in the "energy transition" and that it considered GNLQ's business model to be consistent with the Government's policy to reduce GHG emissions. These repeated affirmations gave rise to a legitimate expectation on Symbio's part that the Project aligned with the Government's environmental policy on climate change and GHG emissions.

715. Between 2015 and 2021 Premiers Couillard and Legault repeatedly advocated in favour of the Project before Québec's National Assembly, sang the praises of GNLQ in public fora, and confirmed the role that natural gas could play in the energy transition:

a. On 21 December 2015, Premier Couillard gave an interview to Radio Canada where he stated that the future was good for natural gas over the next few decades, as it would enable Québec to achieve energy transition and Canadian LNG would support European diversification away from Russian gas.[1047]

b. On 19 September 2016, Jim Illich also met with Premier Couillard at the Breakfast Meeting of the New York Economic Club. On that occasion, the Premier unequivocally stated that he viewed natural gas and LNG as "a cleaner fossil fuel that will be a transition fuel", and that it is important to leverage Quebec's hydroelectricity in that regard.[1048]

c. On 3 June 2019, Premier Legault affirmed that GNLQ was an "important project" for his Government that would reduce GHGs on the planet, and reiterated that LNG is a transition energy to replace oil and coal in other jurisdictions, making a significant contribution to reducing GHG emissions.[1049]

d. On 12 June 2019, Premier Legault defended his endorsement of the GNLQ Project before Québec's National Assembly in response to questions from the opposition.

1047 Email Exchange between Louis Aucoin and the GNLQ Team attaching a transcript of the interview of Premier Couillard with Radio Canada (22-23 December 2015), **Exh. C-0055**.

1048 *See* Email from Jim Illich summarizing meeting with Premier Couillard dated 19 September 2016, **Exh. C-00385**.

1049 *See, e.g.* statements by Premier Legault before the National Assembly of Québec in response to the leader for the second group for the opposition Manon Massé (3 June 2019), **Exh. C-0058** (Unofficial translation from French original) (M. Legault : « Mr. Chairman, GNLQ is an important project. It's a project that, all in all, will reduce GHGs on the planet. And that's important to say, because we can't let people say just anything about the impact on GHGs . . . in a few words, the project involves taking natural gas from Western Canada, liquefying it in Saguenay and exporting it to Europe to replace fuel oil and coal. All in all, we're talking about a very significant reduction in GHG emissions for our planet.").

He stated that the Project "that would create thousands of paying jobs in Saguenay-Lac-Saint-Jean" and "reduce GHG emissions globally".[1050]

e. On 13 June 2019, Premier Legault added that he had explained to Alberta's Premier Kenney that his Government was "open to a gas pipeline that would go to Saguenay, to create thousands of paying jobs, which would then allow liquefied gas to be exported to Europe to replace oil and coal" and therefore "reduce GHGs on the planet" – a comment that was enthusiastically received by GNLQ.[1051]

f. On 17 September 2019, Premier Legault confirmed before the National Assembly that his Government found GNLQ's proposal to replace fossil fuels with Canadian natural gas in Europe a "good idea", as it would result in the net reduction of approximately 21 million tonnes of GHG emissions on a global scale and would result in the creation of jobs in the Province of Québec.[1052]

g. On 4 February 2020, Premier Legault once again touted the Project before the National Assembly. He said the Project represented a 14-billion-dollar-investment and would create 4,000 jobs; he argued that the Project would result in net reduction of approximately 28 million tonnes of GHG emissions in Europe and Asia, as the GNLQ Project relied on hydroelectric power, and would displace coal-fired power plants elsewhere on the planet.[1053]

h. On 16 January 2020, Premier Legault posted a photograph of a meeting with Jim Illich on Twitter, stating that the GNLQ Project and "would reduce greenhouse gases by 28 million tonnes by replacing coalfired power plants."[1054]

1050 *See* "Transcription échange Massé & Legault à la pdq" (12 June 2019), unofficial translation in English, **Exh. C-0059**. In the course of the debate, Premier Legault said: "We believe that if we can demonstrate that gas will replace oil, we will reduce GHGs on the planet. It's a good ... it's a good proposal, because we all live on the same planet, there. Our goal should not be to put walls around Quebec. Emissions, there, it walks around the world. So if we manage to reduce GHGs with the LNG project, that would be good news for the planet." *See also* Radio-Canada, « Échange musclé entre François Legault et Pascal Bérubé sur fond de projets gaziers »,13 June 2019, **Exh. C-0025**.

1051 *See* Transcript of Parliamentary discussion, "GNL Québec - Assemblée Nationale - Période des questions (13 juin)" (13 June 2019), **Exh. C-00386** (Unofficial translation from French original).

1052 *See* Transcript of Parliamentary discussion "Assemblée Nationale - Période de questions (GNL Québec)" (17 September 2019), **Exh. C-0060**, (Unofficial translation from French original). It should be noted that GNLQ envisaged the net reduction of 28 MT, and not 21 as mentioned by the Premier at the time.

1053 *See* Transcript of Parliamentary discussion "Période de questions – GNL" (4 February 2020), **Exh. C-0061** (Unofficial translation from French original). The Premier added: "If we succeed in replacing a certain number of these coal plants with liquefied gas plants, we will reduce GHGs. It will help the planet. It seems to me that that is easy to understand. What does the head of QS not understand about this?"

1054 *See* Radio-Canada, « François Legault rencontre GNL Québec et vante le projet Énergie Saguenay », 16 January 2020, **Exh. C-0026**. (in the original French text: un projet qui « créerait 4000 emplois durant la construction et 250 emplois

i. In April 2021, Premier Legault stated before Québec's National Assembly that the GNLQ Project would lead to replacement, in Europe, of energy sources such as coal with LNG, noting that LNG is a form of transitional energy that will globally reduce global GHG emissions.[1055]

716. Mirroring Premier Legault's support of the Project's strong environmental attributes, many other Québec Ministers and Premier Couillard took turns to underline and defend the social, environmental and economic merits of the Project on several occasions.[1056] For example:

a. On 17 May 2016, Opposition Member Sylvain Simard spoke in glowing terms of the GNLQ Project.[1057] For his part, MELCC Minister David Heurtel described LNG as a transitional source of energy: for the Minister, natural gas represents a great alternative allowing companies to reduce their environmental footprint by emitting up to 25% less GHG emissions compared to other sources, such as oil.[1058] As per the Minister, renewable energy sources were not sufficient to cover the energy demand and natural gas was a transitional solution in the fight against climate change.

b. In February 2020, MERN Minister Julien described the GNLQ Project before the National Assembly as "virtuous" and "hyper important" to the fight against climate change and as "fantastic" for Québec's economic development.[1059]

---

permanents à 100 000 $ par année » and « réduirait les gaz à effet de serre de 28 millions de tonnes en remplaçant des centrales au charbon »).

1055 *See* Journal des Débats de l'Assemblée nationale, Vol. 45 No. 182, 22 April 2021, p. 12231, **Exh. C-0027** (In the original French text: « je l'ai dit à plusieurs reprises, l'idée du projet GNL Québec, c'est de remplacer des formes d'énergie comme l'énergie au charbon, en Europe, par du gaz liquéfié, qui n'est pas parfait, mais qui est une forme de transition qui va réduire ou qui réduirait au total les émissions de gaz à effet de serre sur la planète ».

1056 Witness Statement of Jim Illich (21 November 2023), paras. 138-139**, CWS-1**.

1057 Transcript of parliamentary debates in email from TACT Conseil dated 17 May 2017, **Exh. C-00387** (Simard: « Tout porte à croire que la desserte de gaz naturel des régions non desservies par le réseau gazier pourrait s'avérer avantageuse au plan environnemental pour permettre la substitution du diesel et du mazout, notamment dans les processus industriels, puisque le gaz nature génère moins d'émission de gaz à effet de serre et ces autres combustibles. Je pense, si ma mémoire est bonne, M. le Président, c'est 40 % de diminution des gaz à effet de serre. . . Le marché du carbone peut être un facteur favorisant l'émergence des projets environnementaux, c'est-à-dire un projet comme le GNL, considérant la substitution du diesel, du mazout au gaz naturel.»)

1058 *Id.* (Heurtel : « Il est important de spécifier que, oui, le gaz naturel peut être une alternative intéressante pour les énergies à plus fortes émissions carbone comme le mazout, par exemple . . . Le gaz naturel représente une belle alternative en permettant aux entreprises de diminuer leur empreinte environnementale, ce dernier émettant jusqu'à 25 % moins de gaz à effet de serre que le diesel et étant pratiquement sans émissions de contaminants atmosphériques. »)

1059 *See* Le Devoir, « GNL Québec est un projet « vertueux » pour l'environnement, selon Jonatan Julien », 12 February 2020, **Exh. C-28.**

c. On 19 August 2020, Minister Charette confirmed that he shared his Government's "favourable approach" towards the GNLQ Project, stating that "this is a project that has clear economic and environmental merits".[1060]

d. In September 2020, Québec's Minister for Regional Economic Development Marie-Ève Proulx stated that the construction of a liquefaction plant on the shores of the Saguenay river was "a promising project for the future of Québec" that had "the overall support of "social, economic and municipal stakeholders" and that "there is a very concrete will to move forward with this project."[1061]

717. Once again, these repeated statements were also mirrored at the federal level. For example:

a. On 15-16 November 2016, Jim Illich held meetings with the Pipelines, Gas and LNG Division of NRCAN and Canadian Minister for Natural Resources Jim Carr. High-level NRCAN executives expressly told him that they saw gas as "a transitional less emitting source of energy" than oil.[1062] They also emphasized the overabundance of natural gas in Canada, the "need to get it to market", and that pipelines and LNG plants like our Project were "key" to implementing that policy.[1063]

b. In March 2017, Jim Illich had another brief meeting with Federal NRCAN Minister Carr at the CERA Week—an annual energy conference taking place in Houston, Texas, who expressed his support of the Project and its innovate, low-GHG emission concept.[1064]

c. On 29 April 2019, Jim Illich had another meeting with Federal Minister Champagne in Ottawa, who was also very supportive and emphasized "the importance of

---

1060 *See* Le Devoir, « Aucun engagement financier dans GNL Québec pour le moment », 19 August 2020, **Exh. C-29.** (In the original French text: « [c]'est un projet qui a des mérites économiques et environnementaux manifestes».)

1061 *See* CBC, "With environmental review still pending, Québec minister touts benefits of natural gas project", 25 September 2020, **Exh. C-30**.

1062 Witness Statement of Jim Illich (21 November 2023), para. 143**, CWS-1**.

1063 Witness Statement of Jim Illich (21 November 2023), para. 143**, CWS-1**.

1064 *See* contemporaneous notes of Jim Illich, "CERA-Week - Brief Meeting with Minister Carr March 8, 2017" (8 March 2017), **Exh. C-00388**.

securing investment in large Canadian projects and the ability of our unique project to reduce global GHG emissions."[1065]

d. On 31 October 2019, MELCC Minister Benoit Charette gave an interview for the *Journal de Québec*, where he suggested that Québec's Electrification and Climate Change Fund could be used to subsidize "transition energies" such as natural gas, and could be used to finance GNLQ's Project.[1066]

e. In a letter dated 22 May 2020, Federal MERN Minister O'Regan sent a letter of support to Jim Illich on behalf of the Federal Government, in response to a request for financial assistance following the decision of [redacted] not to invest in the Project.[1067] *Inter alia*, the Minister noted that the Federal Government

> "recognise[d] the potential these two projects have to support the global transition to a low-carbon economy, allow for the export of western natural gas as well as bring economic benefits to Quebec. Canada is working to advance clean energy technology to support our goal of achieving net-zero carbon emissions by 2050, and we recognise that our energy sector has a significant role to play. The production of cleaner sources of energy, including liquefied natural gas, can contribute to displacing higher-emitting energy sources such as coal."[1068]

718. These statements were entirely consistent with the publicly proclaimed, repeatedly-affirmed policies of the Provincial and Federal Governments that natural gas is a key part of that clean energy transition as a "transitional source of energy" and has the ability to reduce GHG emissions by displacing more polluting forms of fuel, such as coal, or LNG sourced from other jurisdictions.[1069] To give but a few examples:

a. In its 2006-2012 Action Plan on Climate Change, the Québec Government emphasized the need for additional energy efficiency measures in order to lower the Province's GHG emissions, including by "converting equipment to cleaner alternatives such as natural gas and biomass."[1070]

1065 *See* Letter from Jim Illich to Minister Champagne dated 17 May 2018, **Exh. C-00389**. *See also* GNLQ, Q2 2019 Report, pp. 7-8 ("A positive meeting was held with Minister Champagne who leads the Federal Ministry of Infrastructure and Communities. The Minister remains supportive of the development.)

1066 *See* email exchange between Pierre-Alexandre Maltais and GNLQ's communication team (31 October 2019), **Exh. C-00390**.

1067 Letter from The Honourable Seamus O'Reagan to Jim Illich (22 May 2020), **Exh. C-0064**.

1068 *Id.*

1069 For more examples, *see* Witness Statement of Jim Illich (21 November 2023), para. 24, **CWS-1**.

1070 Québec, "Québec and Climate Change, A Challenge for the Future" (June 2008), **Exh. C-00391**, p. 23.

b. On 19 February 2015, the Federal Government also announced its intention to implement substantial fiscal relief measures in order to support the development of the LNG industry in Canada: the purpose of this tax treatment was to "encourage proponents to choose Canada . . . for investing in a new LNG export facility by helping them recover their investments quickly."[1071] The following day, Québec's Minister of Energy and Natural Resources (**MERN**) Pierre Arcand welcomed the Government's commitments and affirmed Québec's support for LNG development in Québec as a meaningful way to reduce GHG emissions by replacing oil, and as a major driver for economic growth and maritime development in the province. In his words, this was in line with Québec's energy policy and Maritime Strategy.[1072]

c. In 2016, MERN published the 2030 Energy Policy, which described LNG as "a transition energy" that will "significantly reduce GHG emissions".[1073] A "major milestone" in the deployment of that Energy Policy was the extension by Gaz Métro of its LNG supply to Northern Québec in 2016: on that occasion, Québec's MERN Minister Arcand described this a "landmark project" as "[n]atural gas is a profitable transition energy that will play an important role during the next few decades".[1074] Relying on the parameters of the MERN 2030 Energy Policy, Symbio reasonably believed that "natural gas infrastructure development is a key component of the 2030 Energy Policy issued by the Government of Quebec in late 2016".[1075]

1071 British Columbia, "B.C. welcomes Federal Government's action to support LNG", **Exh. C-00392** ("To support the LNG opportunity, the Government of Canada will establish a capital cost allowance rate of 30% for equipment used to liquefy natural gas and 10% for infrastructure at the export facility. This tax treatment will encourage proponents to choose Canada and British Columbia for investing in a new LNG export facility by helping them recover their investments quickly.")

1072 CISION, « Le ministre Pierre Arcand se réjouit de la volonté du gouvernement fédéral de soutenir l'industrie du gaz naturel liquéfié » (20 February 2015), **Exh. C-00393** (Unofficial translation from French) (Minister Arcand stated: "The LNG market is an energy sector of the future for Quebec. Environmentally, it is a form of energy that can limit our greenhouse gas emissions by replacing the fuel oil currently used in several industries. Economically, it can represent an advantage for established businesses and an incentive for those considering setting up in Quebec, since the use of this energy will improve their competitiveness. As part of the deployment of the Northern Plan and the Maritime Strategy, the development of the LNG supply will become an important asset for attracting investors and relaunching our economy, while improving our energy balance," declared the minister.")

1073 The 2030 Energy Policy- Energy in Québec: A Source of Growth, Québec Government (7 April 2016), **Exh. C-00394**, p. 54 ("To this end, the government intends to: pursue the extension of the gas network; develop a liquefied natural gas supply network; expand renewable natural gas production.")

1074 Energir, "Liquefied natural gas deliveries start to the Stornoway Renard diamond mine in Northern Quebec, 1,040 kilometers from Montreal" (13 June 2016), **Exh. C-0063** ("Natural gas is a profitable transition energy that will play an important role during the next few decades in supporting the economic development and competitiveness of our companies").

1075 Énergie Saguenay LNG Project - Third Round Financing – Status Update and Scenario Overview, **Exh. C-00381**, p. 4 ("It is also important to note that natural gas infrastructure development is a key component of the 2030 Energy Policy issued by the Government of Quebec in late 2016 (as well as its detailed action plan issued in June 2017). For example, Gaz Metro received funds and permits from the Government on July 4th 2017 through the Green Fund to extend its gas pipeline network in a region adjacent to its existing distribution system in Quebec City, where the access to this resource has previously been limited and where the government wishes to support additional industrial and local

d. In October 2018, the Canadian Government also provided Can$ 275 million as federal support to the Shell sponsored LNG Canada Project, which was the "single largest private sector investment project in Canadian history" and a "vote in confidence in a country that recognizes the need to develop [its] energy in a way that takes the environment into account".[1076] Speaking at LNG Canada's FID, Prime Minister Trudeau voiced his support for replacing coal with Canadian LNG in third countries: "*We know LNG produces about half the amount of carbon emissions as coal. So by sending Canadian LNG to markets that are today powered by coal, we will help those jurisdictions transition away from this energy source.*"[1077] (Emphasis added.) In connection with the LNG Canada Project, in 2019 several Federal Ministers voiced their support for LNG as a transition energy to replace coal in growing countries around the world.[1078] Suffice to say that LNG Canada has significantly higher GHG emissions than those that GNLQ would have had.[1079]

e. On 20 July 2021 — just one day before the Québec Government rejected GNLQ's permit application—MERN Minister Jonatan Julien proclaimed that: "Natural gas is a profitable transition energy for Québec" and will enable industry users to "reduce their carbon footprint" and announced another Can$-1-million-grant to Énergir (formerly Gaz Metro) to continue extending its provincial natural gas pipeline system.[1080]

---

development. In addition, Gaz Metro received a few years ago a decree approval for a financial contribution by the Government of Quebec for a pipeline expansion project of approximately 450 km in Northern Quebec between Saguenay and Sept-Iles.")

1076 "LNG Canada announces 40 billion dollar investment that will lead to 10,000 middle class jobs" (2 October 2018), **Exh. C-00395**.

1077 "Prime Minister Trudeau delivers remarks about LNG Canada's $40 billion investment" (2 October 2018) **Exh. C-0053**.

1078 *See e.g.* "Government of Canada confirms support for largest private investment in Canadian history" (24 June 2019), **Exh. C-0066**, and the statements of Minister of Innovation, Science and Economic Development, Navdeep Bains ("LNG Canada's facility will help bring a cleaner Canadian energy source to replace coal to some of the world's fastest growing economies") and of Minister of Natural Resources Amarjeet ("the LNG development has the potential to help the world build a low carbon energy future.")

1079 Witness Statement of Vivek Bidwai (21 November 2023), Section III**, CWS-2**.

1080 Québec, « Prolongement du réseau de distribution de gaz naturel - Québec investit plus de 1 M$ pour le développement économique en Montérégie » (20 July 2021), **Exh. C-00396**.

f. More broadly, the support of the Québec and Federal Government for natural gas as a transitional source of energy is evident in the fact that they have made a raft of LNG-related investments since 2014.[1081]

719. Based on these repeated, specific and targeted statements, it was entirely reasonable for the Claimant and Symbio to form the legitimate expectation that natural gas was an essential component of the energy policy of the Governments of Québec and of Canada as a transitional source of energy, and that the Project was consistent with the overarching policy of reducing GHG emissions by displacing more pollutive forms of energy, like coal and oil.

720. These legitimate expectations were repudiated through the MELCC's environmental review process, as explained below.

(3) Québec and Federal Government officials created the legitimate expectation that the impact on beluga whales arising from increased maritime traffic could be managed through reasonable and appropriate mitigation measures

721. In addition, Québec and Federal Government officials created the legitimate expectation that the increased maritime traffic that would result from the operation of the LNG export terminal was consistent with the Government's policy for the economic development of the Port of Saguenay, and that any impact on marine mammals could effectively be managed through appropriate mitigation measures.

722. As noted above, when the Project team visited the Saguenay for the first time in October 2013, the SPA and local stakeholders were entirely supportive of Freestone's proposal. This level of support was consistent with the position of the Federal and Québec Government at the time that the Saguenay River was an important shipping route for the local economy and was the vehicle for the region to become a highway for economic development.[1082] Indeed, the Québec Government consistently promoted shipping on the St. Lawrence as a key driver of Québec's development, a policy that aligned perfectly with the Project's vision.[1083] On 29 June 2015, Premier Couillard was the first Premier to launch Québec's maritime strategy,

---

1081 Witness Statement of Jim Illich (21 November 2023), para. 26, **CWS-1**.

1082 Witness Statement of Vivek Bidwai (21 November 2023), para. 62, **CWS-2**.

1083 Québec, Ministère des Finances, Communiqué de presse No. 4, « Budget 2014-2015 - Déploiement de la stratégie maritime du Québec », **Exh. C-0077**. The selection of the Saguenay site was complementary with Canadian Prime Minister Stephen Harper's plan as of 2012 to modernise the Port of Saguenay with additional railway infrastructure "[to] boost the effectiveness and capacity of port operations". *See* Government of Canada, "PM Announces Job-Creating Investments in the Port of Saguenay" (17 January 2012), **Exh. C-0076**

together with an action plan for 2015-2020 aimed at making full use and promotion of the St. Lawrence River, contemplating a Can$1.5 billion investment.[1084]

723. According to the Québec Government, this strategy was aimed at highlighting the importance of the St. Lawrence River to the region's long-term economic growth.[1085] The Saguenay Port would profit from important capital investments earmarked for industrial port zones.[1086] As part of his maritime strategy, Premier Couillard concluded in 2016 an agreement for the establishment of an industrial-port zone in Saguenay.[1087]

724. In light of these policies, SPA representatives made repeated representations to Jim Illich and his team that the SPA's ambition was to return the Saguenay Port to the historic navigation levels before the 1970s (about 600 ships/year), which is precisely why they encouraged GNLQ and other kinds of export projects to locate in Saguenay.[1088]

725. These reassurances were perfectly consistent with the official position that the SPA had taken a couple of years earlier before the BAPE Commission in respect of a parallel environmental review process for a different industrial project in the Saguenay.[1089] In that process, the SPA stated, in no uncertain terms, that an increase of marine transit in the Saguenay River within the limits of the historic maritime traffic could be accommodated without any problems.[1090] For its part, the BAPE Commission accepted the SPA's representations that any risk of increased maritime traffic on beluga whales could be

---

1084 *See* Ministère des Relations internationales et de la Francophonie, Lancement de la Stratégie maritime du Québec, (29 June 2015), **Exh. C-0078**. *See also* Ministère des Relations internationales et de la Francophonie, La toute première stratégie maritime de l'histoire du Québec est lancée (29 June 2015), **Exh. C-0079**. *See further* Parti Libéral du Québec, « Une Strategie Maritime pour le Québec » (2014), **Exh. C-0080**, pp. 4 and 18.

1085 Gouvernement du Québec – Secrétariat aux affaires maritimes, « Stratégie maritime, Plan d'action 2015-2020 » (29 June 2015), **Exh. C-0082**, p. 53. *See also* Ministère des Relations internationales et de la Francophonie, « Lancement de la Stratégie maritime du Québec » (29 June 2015), **Exh. C-0078**; Ministère des Relations internationales et de la Francophonie, « La toute première stratégie maritime de l'histoire du Québec est lancée » (29 June 2015), **Exh. C-0079**.

1086 Informe Affaires, « Stratégie Maritime Du Québec | Port-Saguenay Bien Positionné Pour Se Développer » (30 October 2015), **Exh. C-0081**.

1087 Le Devoir, « Québec veut développer l'activité portuaire » (7 June 2016), **Exh. C-0083**. The Government revised the Maritime Strategy for the St. Lawrence River in 2021, envisaging a Can$ 927-million investment in maritime infrastructure, including a Can$ 300 million envelope for the modernisation of ports. *See* Ministère des Transports, « Avantage Saint-Laurent – L'économie bleue au cœur de la relance économique » (17 June 2021), **Exh. C-0084**; Radio-Canada, «Stratégie maritime : les grandes espérances de l'Est-du-Québec » (17 June 2021), **Exh. C-00397**.

1088 Witness Statement of Vivek Bidwai (21 November 2023), para. 59, **CWS-2**.

1089 Witness Statement of Vivek Bidwai (21 November 2023), para. 57, **CWS-2** ("I recall that, at the time, the SPA kept telling us about the Black Rock Project in the course of our discussions as evidence for its support for the economic development of the Port of Saguenay.")

1090 BAPE Commission, « Projet de desserte ferroviaire au terminal maritime de Grande-Anse à Saguenay Rapport d'enquête et d'audience publique » (September 2012), **Exh. C-00398**, p. 50.

managed, depending on the ability of responders to react quickly in the event of an accident and the existence of emergency response plans and appropriate management plans.[1091]

726. Prior to selecting the Grand-Anse site, the Project team had also conducted thorough due diligence at the stage of selecting the optimal site for the liquefaction plant.[1092] This initial due diligence revealed that a few years earlier, the Province of Québec had already granted environmental approval to two other LNG facilities that were proposed in the Saguenay: one in the location of Gros-Cacouna and another in the location of Rabaska.[1093] This was in spite of the fact that the Gros-Cacouna LNG terminal would have been located in the middle of the critical habitat of the belugas whales, and the Rabaska site was less than 2 km away from the mating areas of beluga whales in the St. Lawrence estuary.[1094]

727. The SPA made specific representations to the Project at the time that any impacts on beluga whales would be minimal, and could effectively be managed. In the early phase of the Project, SPA officials told Project team members that while belugas whales do frequent parts of the Saguenay river during the summer, the Saguenay port is located far from their natural habitat and the presence of belugas in the project site was infrequent, if not very rare.[1095] SPA officials also told them that that year-round industrial shipping operations from the Port of Saguenay and Rio Tinto's port in the nearby Baie des Ha! Ha! had safely coexisted with marine mammals, cruise ships, and recreational vessels on the Saguenay river for decades.[1096]

728. These representations were perfectly consistent with the environmental impact assessment that the SPA *itself* conducted with respect to its project for the North Shore Terminal, which was less than 8 km away from the Grande-Anse site, and received approval from Canada on 22 October 2018.[1097] In its environmental impact assessment study, the SPA concludes that:

> "The most upstream listed observation of a beluga in the literature corresponds to a site located about 5 km downstream of the site project. High Beluga residential areas in Saguenay match with protected critical habitat for this

---

1091 *Id.*, pp. 50-51.

1092 *See generally* "Site Selection" (30 September 2013), **Exh. VB-0002**, pp. 1, 2-13.

1093 Witness Statement of Vivek Bidwai (21 November 2023), paras. 33-38**, CWS-2**.

1094 Witness Statement of Vivek Bidwai (21 November 2023), paras. 49-51**, CWS-2**.

1095 Witness Statement of Vivek Bidwai (21 November 2023), para. 51**, CWS-2**.

1096 Witness Statement of Vivek Bidwai (21 November 2023), para. 52**, CWS-2**.

1097 IAAC/AEIC, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 to Saguenay Port Authority for the Marine Terminal Project on the North Shore of the Saguenay (20 October 2018), **Exh. C-00363**.

> species . . . The probability of the presence of . . . beluga in the local study area is considered low, therefore the effects of noise have a low probability of occurring. The importance of the likely residual effect regarding noise on marine mammals is considered not significant. . . . Practices and procedures that will be implemented at the terminal will oversee the maneuvers of ships and mitigate the potential effects of noise on marine mammals. The importance of the likely residual effect considered on the low probability of the presence of belugas in the terminal area is considered not significant."[1098]

729. The Project in any event performed its own due diligence on this issue. It instructed its environmental experts to conduct on-site observations and research on the summer distribution of marine mammals in the Saguenay River, paying special attention to sightings within the vicinity of proposed Project site.[1099] Freestone's environmental advisors concluded that "belugas are either absent or extremely infrequent summer visitors to this area of the river", recording only one sighting of beluga whales between 1990 and 2014, at a location 13 km away from the Project site.[1100] On that basis, they concluded that any impacts on marine mammals could be managed through appropriate mitigation measures, including by reducing the speed limit.[1101]

730. Additionally, in October 2017 Carl Laberge, President and CEO of SPA, publicly defended the North Shore Terminal, of which the SPA was the project proponent and which is located just 8 km from GNLQ's Grande-Anse site. In so doing, Carl Laberge referred to the cumulative impact on beluga whales of all proposed projects on the Saguenay (including the Project) as being "minimal" and representing a "completely different" situation from Gros-Cacouna.[1102] According to the SPA, even an aggregate increase of maritime traffic from 220 vessels per year to 650 would have a "minimal impact" on the acoustic environment of the belugas.[1103] The IAAC authorized the North Shore Terminal Project in 2018, concluding that it was "not likely to cause significant adverse environmental effects" under the 2012 Canadian Environmental Assessment Act.[1104] In reaching this determination, the IAAC

1098 *See* SPA, "Maritime Terminal Project on The North Shore of the Saguenay – Environmental Impact Statement Summary" (August 2016), **Exh. C-00399**, pp. 50-51.

1099 Witness Statement of Vivek Bidwai (21 November 2023), para. 53**, CWS-2**.

1100 Witness Statement of Vivek Bidwai (21 November 2023), para. 54, **CWS-2**.

1101 Witness Statement of Vivek Bidwai (21 November 2023), para. 55, **CWS-2**.

1102 Le Quotidien, « Le béluga ne serait pas affecté » (23 October 2017), **Exh. C-00400**.

1103 *Id*.

1104 IAAC/AEIC, Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 to Saguenay Port Authority for the Marine Terminal Project on the North Shore of the Saguenay (20 October 2018), **Exh. C-00363**.

considered the cumulative impacts of *GNLQ* and other projects proposed at the time.[1105] As noted above, the SPA relied on the same environmental permit experts (WSP), who used the exact same data of marine traffic for the preparation of both environmental studies.[1106]

731. It was therefore clear that the development of the industrial port of the Saguenay was a key policy whereas any adverse impacts flowing from increased shipping in the Saguenay River could be managed through appropriate mitigation measures. Indeed, when the Québec Government designated the beluga whale critical habitat in 2016 – which, to be clear, did *not* extend to the waters adjacent to the Project site – the Saguenay Chamber of Commerce even issued a press release emphasising that:

> "the Saguenay is a waterway protected by the Navigation Protection Act. Maritime transport is important to the region's development. It is the Saguenay that has enabled development and settlement in our region. The order issued by the federal government concerning beluga whale critical habitat does not affect normal marine traffic unless there is excessive noise pollution, such as sonar use."[1107]

732. This was also consistent with statements from Premier Couillard himself two years later that the adjustment of maritime transit for the protection of marine mammals in the marine park would not result in "landlocking" the region.[1108]

733. Based on these specific, consistent and sustained representations, it was entirely reasonable for the Claimant to form the expectation that the increased maritime traffic that would result from the LNG export terminal was consistent with the Government's policy for the economic development of the Port of Saguenay, and that any impact on marine mammals could effectively be managed through appropriate mitigation measures.

734. Acting on these specific representations, the Project sought expert advice from leading LNG shipping consultant Keith Bainbridge, who advised *inter alia* on noise mitigation and silencing measures.[1109] As Mr. Bainbridge notes, by chartering LNG vessels, "GNLQ would be best positioned to ensure compliance with any regulations might be applicable to the shipping of their LNG, to the highest possible standard with appropriate and necessary

---

1105 CAAE/ACEE, "Marine Terminal Project on the North Shore of the Saguenay - Environmental Assessment Report" (October 2018), **Exh. C-0215**, pp. 186, 201, 212-214 and 249.

1106 Witness Statement of Vivek Bidwai (21 November 2023), para. 64.

1107 Chambre de Commerce du Saguenay, Communiqué «Bélugas et projets empruntant la voie maritime du Saguenay - Le Saguenay est un axe navigable protégé par la loi » (18 May 2016), **Exh. C-00401** (Unofficial translation from French original).

1108 Radio Canada, « Philippe Couillard rassure les gens d'affaires de la région » (8 juin 2018), **Exh. C-00402**.

1109 Witness Statement of Keith Bainbridge (21 November 2023), Section VI.

adaptations to its own vessels."[1110] In his opinion, "the GNLQ team took this advice to heart, in the end adopting a commercial and technical strategy that put them in full contractual control of the vessels they were chartering for use."[1111] In this connection, appropriate ship design was an important way to manage and mitigate the subaquatic noise issue.[1112] To that end, Mr. Bainbridge advised GNLQ on possible mitigation and noise-reduction measures in response to specific questions posed by the regulators:

> "Over the course of 2019 and beyond, I regularly shared with the GNLQ team relevant and recent scientific literature as well as industry know-how, on all manner of noise-mitigating or silencing measures for vessels, which I thought could be incorporated into its LNG carrier fleet. From my experience, I knew which sound reducing technologies were already prevalent in the shipping industry, and had been deployed up to that point on specific classes of ships (*e.g.* survey vessels with a special need to pass silently). . . . In January 2019, I attended, at the request of GNLQ, a Transport Canada workshop titled "Quieting Ships to Protect the Marine Environment" at the IMO London headquarters in January 2019, and subsequently shared the workshop papers and report with GNLQ. . . . In September 2019, I confirmed to the GNLQ team that they should also integrate a range of other noise mitigation measures for its chartered LNG carrier fleet, including contra-rotating propellers, anti-fouling coating, hull air-lubrication, as well as regular propeller and hull maintenance . . . in my experience GNLQ was going far over and above any noise-mitigation measures adopted up to that point in the shipping industry. As of 2019, subaquatic noise was not something most commercial shipping even thought about, let alone measured or sought to mitigate. I am not aware of any other LNG project to-date that has adopted similar or greater noise reduction measures."[1113]

735. Thus, the Project acted on the Government's representations and implemented specific measures to address the issue of subaquatic noise. It was only reasonable to expect that any impact on beluga whales arising from marine traffic could effectively be managed by complying with best practices applicable to noise-mitigation. These expectations were repudiated through the MELCC's environmental review process, as explained below.

(iii) The Respondent repudiated the Claimant's legitimate expectations throughout the environmental review process

736. *First*, the MELCC created the legitimate expectation that the GNLQ Project would be assessed on the basis of the criteria that the MELCC itself had identified on 10 December 2015 in the MELCC Directive and were consistently re-affirmed throughout the

---

1110 *Id.*, para. 18.

1111 *Id.*, para. 18.

1112 *Id.*, para. 39.

1113 *Id.*, paras. 40-41, 43 and 47.

environmental review process. Through a series of targeted representations, the MELCC consistently affirmed the criteria enunciated in the MELCC Directive. It was only after five years of continued discussions, in March 2021, that Minister Charette upended turned the environmental review process to its head, introducing his new, so-called "core criteria" that had no connection with the specific representations of the MELCC up until that point.

737. The introduction to the MELCC Directive stated that:

> "The minister's directive indicates to the project initiator the nature, scope and extent of the environmental impact study that it must carry out. It presents an approach aimed at providing the information necessary for the environmental assessment of the proposed project and the authorization process by the government. This directive presents in the introduction the characteristics of the impact study as well as the requirements and objectives that it should aim for. It then includes two main parts, namely the content of the impact study and its presentation."[1114]

738. Relying on the plain language of the Directive, it was entirely reasonable for GNLQ to expect that the Directive contained the "information necessary" to conduct "the environmental assessment of the proposed project and the authorization process by the government" as well as the relevant "requirements and objectives" of the EIS, and that its Project would be assessed against the criteria identified therein.

739. As Me Duchaine notes in her Report, the issuance of the MELCC Directive was a crucial step in GNLQ's environmental assessment process.[1115] The MELCC Directive set out the four corners within which the MELCC had to carry out its environmental analysis and make its recommendation to the Environment Minister and within which the Québec Government could exercise its discretion to either approve or reject the GNLQ Project.[1116]

740. Me Duchaine notes in her Report that as a matter of Québec law, the Directive identified the issues that had to and could be evaluated to determine the environmental acceptability of the GNLQ Project.[1117]

741. Me Duchaine further finds in her report that as a matter of Québec law, the MELCC Directive circumscribed the exercise of the Québec Government's discretion to approve or reject the

---

1114 MELCC Directive, Avant-Propos, p. 3 (unofficial translation from French original).

1115 Expert Report of Me Christine Duchaine, 20 November 2023, p. 80, **CER-1**.

1116 Expert Report of Me Christine Duchaine, 20 November 2023, p. 5, **CER-1**.

1117 Expert Report of Me Christine Duchaine, 20 November 2023, p. 80, **CER-1**.

GNLQ Project, and that it precluded the MELCC from assessing the GNLQ Project against criteria that were not explicitly set out in the MELCC Directive.[1118]

742. However, as Me Duchaine notes, of the three "core criteria" suddenly invoked by the Minister as determinative to environmental approval in March 2021, two were not mentioned at all in the MELCC Directive (the GNLQ Project's global impact on GHGs, and its contribution to worldwide energy transition), while the third (social acceptability) had been mentioned only implicitly, and had not been the subject of any commentary or questions by MELCC over the course of its review.[1119] The Directive did not enable the Environment Minister to decide to authorise or refuse the GNLQ Project based on criteria, two of which were entirely absent from the MELCC Directive, and a third only obliquely referenced.

743. When GNLQ received the MELCC Directive, its Director for the Environment and Communities who led the environmental review process at the time observed that "this [wa]s a generic document with no surprise."[1120] Similarly, when the IAAC communicated the guidelines for the preparation of the EIS in March 2016, the President of GNLQ remarked: "[ç]a semble être comme on voulait."[1121]

744. Acting on the basis of the MELCC's guidance, GNLQ spent over three years working on its EIS, which it submitted in February 2019, responding to each of the individual elements identified in the MELCC's Directive. An internal analysis of the environmental permitting process dated back from 2017 confirms that the environmental criteria were in line with Symbio's legitimate expectations, and did not raise any major environmental issues: "[a]s per the usual process, the MDDELCC provided its list of guidelines on December 10th, 2015 that were in line with the expectations of the GNLQI development team."[1122] Additional baseline studies that took place in 2017 "resulted in a clear confirmation from GNLQI's environmental permitting consultant, WSP, that no major environmental issues have been surfaced."[1123] To recall, WSP is the exact same environmental permitting consultant that the

---

1118 Expert Report of Me Christine Duchaine, 20 November 2023, pp. 5, 80-81, **CER-1**.

1119 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 5, 24, 76, 129, **CER-1**.

1120 Email from Lise Castonguay to GNLQ team, "Guidelines for SEIA", 16 December 2015, **Exh. C-00403**.

1121 Email from Michel Gagnon to Lise Castonguay, "Énergie Saguenay- Lignes directrices pour la préparation d'une étude d'impact environnemental", 14 March 2016, **Exh. C-00404**.

1122 Energie Saguenay, "LNG Project Overview of Environmental Permitting and other Key Quebec Government Approvals", 26 September 2017, **Exh. C-00378**, p. 1.

1123 *Id.*

SPA used for the purposes of producing the EIS of the North Shore Terminal in the Saguenay, which received environmental approval in 2018. [1124]

745. Me Duchaine noted in her Report that by validating GNLQ's EIS and stating that it addressed all issues set out in the MELCC Directive in a satisfactory manner, [1125] GNLQ had a legitimate expectation under Québec and Canadian law that the Québec Government would approve the GNLQ Project, and that the Minister of the Environment would comply with the parameters set out in the MELCC Directive by virtue of: (i) the very issuance of the MELCC Directive; the extensive support and encouragement that GNLQ had received for its Project from the Québec Government; (ii) the considerable sums of money that GNLQ had invested in the Project, the EIS and the environmental assessment process; and (iii) the fact that the MELCC had found that GNLQ's EIS was admissible and complete, and that it satisfactorily dealt with the matters that GNLQ was required to address under the MELCC Directive.[1126]

746. By moving the goalposts at the eleventh hour, the Respondent repudiated the legitimate expectations that it had created in Claimant, through consistent and specific representations throughout this process:

> « Étant donné que la procédure encadrant l'ÉEIE prévue par la LQE est détaillée, qu'une Directive prescrite par la LQE indiquant sur quels critères l'analyse environnementale doit être effectuée a été émise par le Ministre et que l'évaluation environnementale effectuée a été jugée recevable par le Ministre, nous sommes d'avis que GNL Québec était en droit de s'attendre à ce que l'ÉEIE respecte ces paramètres. Or, en ajoutant à la fin du processus de nouveaux critères que le Projet devait impérativement rencontrer pour être autorisé et en refusant le Projet sur la base de ces nouveaux critères, le Ministre et le gouvernement se sont écartés sans justification de la procédure prescrite par la LQE et de la manière de procéder usuelle des autres projets assujettis. »[1127]

747. After spending years encouraging the Claimant to pursue the GNLQ Project, the Quebec and Federal governments ultimately rejected the Claimant to gain a perceived political advantage. Canada has therefore breached Article 1105(1) of the NAFTA. As demonstrated in the preceding sections, the Québec and Federal Government's conduct was manifestly arbitrary and amounted to discriminatory targeting the Claimant. Moreover, Québec's conduct violated the Claimant's legitimate expectations. These breaches give rise to compensation obligations, discussed in the following section ("Relief Requested").

1124 Witness Statement of Vivek Bidwai (21 November 2023), para. 64, **CWS-2**.

1125 MELCC, Avis sur la recevabilité de l'étude d'impact, Doc. No. PR7 (February 2020), **Exh. C-00221**.

1126 Expert Report of Me Christine Duchaine, 21 November 2023, pp. 76, 80, **CER-1**.

1127 Expert Report of Me Christine Duchaine, 21 November 2023, p. 49, **CER-1**.

*

748. Canada has therefore breached Article 1105(1) of the NAFTA. As demonstrated in the preceding sections, the Québec and Federal Government's conduct was manifestly arbitrary and amounted to discriminatory targeting the Claimant. Moreover, Québec's conduct violated the Claimant's legitimate expectations. These breaches give rise to compensation obligations, discussed in the following section ("Relief Requested").

C. The Measures Amount to an Expropriation of the Claimants' Investment Contrary to NAFTA Article 1110

749. Article 1110 of the NAFTA prohibits the NAFTA Parties from expropriating the investments of investors without compensation. It states in relevant part as follows:

> "1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
>
> (a) for a public purpose;
>
> (b) on a non-discriminatory basis;
>
> (c) in accordance with due process of law and Article 1105(1); and
>
> (d) on payment of compensation in accordance with paragraphs 2 through 6…"

750. As described in the following sections, Canada indirectly expropriated the Claimant's investments, in violation of Article 1110 of the NAFTA.

751. As explained above, the decision by the Québec Government and by Federal Government of Canada not to authorise the GNLQ Project ostensibly on environmental grounds, in a manner that was fundamentally arbitrary, discriminatory and procedurally unfair — and the fundamentally arbitrary and procedurally irregular announcement by that the Gazoduq Project "died"[1128] together with GNLQ — amounted to an indirect expropriation of the Claimant's investments in the two Projects. These actions were unlawful under Article 1110(a) to (d) of the NAFTA, as they were not taken for a public purpose; they were taken on a discriminatory basis; they fell short of the requirements of due process of law and Article 1105(1) of the NAFTA; and were not accompanied by the payment of compensation.

1. Canada Indirectly Expropriated the Claimant's Investments

a. Indirect Expropriation Under NAFTA Article 1110

[1128] *See* Radio-Canada, « Rejet de GNL Québec: il n'y aura pas de BAPE sur le projet de Gazoduq », 21 July 2021, **Exh. C-0035**.

752. Article 1110 contemplates both direct (*de jure*) and indirect (*de facto*) expropriation. In the case of *Waste Management v. Mexico*, the NAFTA tribunal recognised that:

> "[NAFTA] Article 1110(1) distinguishes between direct or indirect expropriation on the one hand and measures tantamount to an expropriation on the other. An indirect expropriation is still a taking of property. By contrast where a measure tantamount to an expropriation is alleged, there may have been no actual transfer, taking or loss of property by any person or entity, but rather an effect on property which makes formal distinctions of ownership irrelevant."[1129]

753. As noted by the arbitral tribunal in *Windstream v. Canada*, Article 1110 sets out the criteria for legality of expropriation and defines the modalities of compensation, but does not provide any criteria for determining whether or when an expropriation has taken place.[1130] However, investment tribunals under the NAFTA have developed specific criteria for determining whether a *de facto* or indirect expropriation has occurred:

> "NAFTA tribunals have generally taken the view that under Article 1110 of NAFTA the determination of whether an indirect expropriation has taken place is in the first place a matter of evidence, that is, a factual determination of whether an effective or *de facto* taking of property that is attributable to the State has taken place, even if there has been no formal transfer of title, and even if the host State has not obtained any economic benefit. If it is determined that such a *de facto* taking has indeed taken place, the issue arises as to whether the taking is lawful, and what the appropriate form and level of relief should be. In certain circumstances, the question may also arise as to whether the alleged taking is excused by a justification provided under international law, such as the police powers doctrine."[1131]

754. In determining whether an indirect expropriation has taken place, the *Windstream* tribunal endorsed a consistent line of jurisprudence under the NAFTA that indirect expropriation occurs where the investor is substantially deprived of the value of its investment by measures attributable to a NAFTA Party. The tribunal referred to the case of *Metalclad v. Mexico*, where the tribunal described expropriation under Article 1110 as follows:

> "Thus, expropriation under NAFTA includes not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic

---

1129 *Waste Management, Inc. v. United Mexican States* (ICSID Case No. ARB(AF)/00/3) Award (30 April 2004), para. 143, **CL-00040**.

1130 *Windstream Energy LLC v. The Government of Canada* (PCA Case No. 2013-22), Award (27 September 2016), para. 283, **CL-00046**.

1131 *Id.*, para. 284.

benefit of property even if not necessarily to the obvious benefit of the host State."[1132]

755. Similarly, the tribunal in *S.D. Myers v. Canada* found that State action that deprives an investor of the ability to make use of its economic rights amounts to expropriation.[1133] In *Archer Daniels Midland Company v. Mexico*, the tribunal also held that the severity of the economic impact is the decisive criterion in determining whether an indirect expropriation has taken place; an expropriation will occur if "the interference is substantial and deprives the investor of all or most of the benefits of the investment."[1134]

756. A finding of indirect expropriation is not conditional on the investor no longer controlling the investment, but rather turns on whether the governmental measures have deprived the owner of substantially all of the benefits of its vested property rights.[1135] For example, tribunals have stated that a substantial deprivation amounting to expropriation occurs where: the investor has lost, in whole or in significant part, the use or reasonably-to-be expected economic benefit of the investment;[1136] the most economically optimal use of the investment has been rendered useless;[1137] or the investment's economic value has been neutralized or destroyed, as if the rights related thereto had ceased to exist.[1138]

1132 *Id.,* paras. 285 and 287 ("The Tribunal agrees that the first step in the process of determining whether an effective taking has taken place is to determine whether the investor has been substantially deprived of the value of its investment. This is a test that has been applied by numerous investment treaty tribunals, including NAFTA tribunals"), referring to *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000), para. 103, **CL-00059**.

1133 *S.D. Myers, Inc. v. Government of Canada* (UNCITRAL) Partial Award (13 November 2000), para. 283, **CL-0007**.

1134 *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States* (ICSID Case No. ARB(AF)/04/5), Award (21 November 2007), para. 240, **CL-00033**. The tribunal added that "[t]here is a broad consensus in academic writings that the intensity and duration of the economic deprivation is the crucial factor in identifying an indirect expropriation or equivalent measure." *See also Cargill Incorporated v. United Mexican States* (ICSID Case No. ARB(AF)/05/2), Award of 18 September 2009, para. 360, **CL-00021.** ("It is widely accepted that a finding of expropriation of property under customary international law requires a radical deprivation of a claimant's economic use and enjoyment of its investment. This is the consistent view of previous NAFTA tribunals.")

1135 *See CME Czech Republic B.V. (The Netherlands) v. The Czech Republic* (UNCITRAL), Partial Award (13 September 2001), para. 604, **CL-00060** ("measures that do not involve an overt taking but that effectively neutralize the benefit of the property of the foreign owner, are subject to expropriation claims. This is undisputed under international law". (internal citations omitted)); *Phelps Dodge Corp. v. Islamic Republic of Iran* (Award No. 217–99–2), 10 Iran–US CTR 121 (19 March 1986), para. 22, **CL-00061**("A deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected");

1136 *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000), paras. 103-104 (denial of the claimant's ability to operate a landfill), **CL-00059**; *Petrolane Inc. and Ors. v. Islamic Republic of Iran and Ors.*, 27 Iran–US CTR 64 (27 September 1991), para. 96, **CL-00062** (prevention of exportation of excess equipment "deprived the Claimant of the effective use, benefit and control of the equipment . . . in breach of contract, as well as constituting an expropriation"); *Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic* (ICSID Case No. ARB/97/3) Award (20 August 2007), paras. 7.5.11-7.5.16, **CL-00063** ("it is not infrequent in cases of indirect expropriation that the investor suffers a substantial deprivation of value of its investment. Numerous tribunals have looked at the diminution of the value of the investment to determine whether the contested measure is expropriatory").

1137 *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. Mexico* (ICSID Case No. ARB(AF)/04/05) Award (21 November 2007), para. 246, **CL-00033**.

1138 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States* (ICSID Case No. ARB (AF)/00/2) Award (29 May 2003), para. 115, **CL-00064** ("the Claimant, due to [the impugned measure] was radically deprived of the economical use

757. In determining the degree of intensity of interference, NAFTA tribunals are consistent that a claimant must be radically deprived of the economical use and enjoyment of its investments. As noted by the arbitral tribunals in *Glamis Gold v. USA*,

> "Several NAFTA tribunals agree on the extent of interference that must occur for the finding of an expropriation, phrasing the test in one instance as, 'the affected property must be impaired to such an extent that it must be seen as "taken"'; and in another instance as, 'the test is whether that interference is sufficiently restrictive to support a conclusion that the property has been "taken" from the owner.' Therefore, a panel's analysis should begin with determining whether the economic impact of the complained of measures is sufficient to potentially constitute a taking at all: '[I]t must first be determined if the Claimant was radically deprived of the economical use and enjoyment of its investments, as if the rights related thereto ... had ceased to exist.' The Tribunal agrees with these statements and thus begins its analysis of whether a violation of Article 1110 of the NAFTA has occurred by determining whether the federal and California measures 'substantially impair[ed] the investor's economic rights, i.e. ownership, use, enjoyment or management of the business, by rendering them useless."[1139]

758. Tribunals are also unanimous that the question whether a substantial deprivation of the value of an investment has occurred is a fact-based inquiry which falls to be considered on a case-by-case basis.[1140] In determining whether an indirect expropriation has occurred, the Tribunal should consider both the objective impact of the measure on the economic benefit to the Claimants' investment, as well as the relative impact of the measure on the Claimants' reasonably held expectations.[1141]

759. Finally, the Claimants note that in recent years, Canada has espoused a more detailed formulation of the test to be applied in determining the existence of an indirect expropriation. For example, Canada has relied on "interpretative annexes" set out in subsequent Canadian

---

and enjoyment of its investments, as if the rights related thereto — such as the income or benefits related to the Landfill or to its exploitation had ceased to exist."); *Electrabel S.A. v. Republic of Hungary* (ICSID Case No. ARB/07/19) Decision on Jurisdiction, Applicable Law and Liability (30 November 2012), para. 6.62, **CL-00065** (the investor must establish "the substantial, radical, severe, devastating or fundamental deprivation of its rights or the virtual annihilation, effective neutralisation or factual destruction of its investment, its value or enjoyment.")

1139 *Glamis Gold, Ltd. v. The United States of America* (UNCITRAL), Final Award (8 June 2009), para. 357 (without emphasis in the original), **CL-00035.**

1140 *See, e.g., Chemtura Corporation v. Government of Canada* (UNCITRAL) Award (2 August 2010), para. 249, **CL-00050**. ("The determination of whether there has been a "substantial deprivation" is a fact-sensitive exercise to be conducted in the light of the circumstances of each case. . . . One important feature of fact-sensitive assessments is that they cannot be conducted on the basis of rigid binary rules. It would make little sense to state a percentage or a threshold that would have to be met for a deprivation to be 'substantial' as such *modus operandi* may not always be appropriate. For instance, one could think of cases where one specific asset (a building, a piece of land, a line of business) which represents a part of the value of all the different assets held by a foreign investor in the host State has been entirely expropriated. In such case, applying a percentage or threshold approach to the overall assets held by the investor in the host State would preclude the deprivation from being 'substantial', whereas applying the same assessment to the specific asset in question would lead to the opposite conclusion. Given the diversity of situations that may arise in practice, it is preferable to examine each situation in the light of its own specific circumstances.").

1141 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States* (ICSID Case No. ARB (AF)/00/2) Award (29 May 2003), paras. 149-150, **CL-00064**.

and U.S. investment treaties, as "useful guidance" for NAFTA tribunals.[1142] These annexes incorporate language closely similar to that included in Article 9(3) of Canada's most recent Model Foreign Investment Promotion and Protection Agreement (2021), which provides as follows:

> "The determination of whether a measure or a series of measures of a Party has an effect equivalent to direct expropriation requires a case-by-case, fact-based inquiry that shall consider:
>
> (a) the economic impact of the measure or the series of measures, although the sole fact that a measure or a series of measures of a Party has an adverse effect on the economic value of a covered investment does not establish that an indirect expropriation has occurred;
>
> (b) the duration of the measure or series of measures of a Party;
>
> (c) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations; and
>
> (d) the character of the measure or the series of measures."[1143]

760. As a matter of treaty interpretation, the Claimant does not accept that Canada's later stated approaches should take precedence over the actual language of the treaty in issue in this dispute. The interpretation of the relevant provisions of the NAFTA must conform to the customary rules of treaty interpretation, codified in Articles 31 to 33 of the Vienna Convention on the Law of Treaties, which are based on the terms of the applicable legal instrument. It would be inconsistent with those provisions to interpret Article 1110 of the NAFTA by reference to the language found in extraneous treaties. Nevertheless, even under Canada's own articulation of the considerations relevant to determining an indirect expropriation, it is clear that Canada's conduct amounts to an indirect expropriation.

b. Canada's measures amount to an indirect expropriation

761. In the present case, the actions of the Government of Québec and of the Federal Government of Canada amount to an indirect expropriation based on the legal criteria enunciated in the preceding section, and there is no legitimate justification for these actions under any theory or doctrine of police powers under customary law.

762. *First*, the decision not to authorise the GNLQ and Gazoduq Projects had a devastating economic impact on the value of the GNLQ and Gazoduq Projects: the Claimant was radically deprived of the use, economic value, and reasonably-to-be expected economic

---

1142 See, e.g., *Windstream Energy, LLC v. Government of Canada* (UNCITRAL), Government of Canada, Counter-Memorial (20 January 2015), para. 475, **CL-00058**.

1143 Canada's 2021 Foreign Investment Promotion and Protection Agreement (FIPA) Model, Article 9, **CL-00043**. *See also* USMCA, Chapter 14, Annex 14-B ("Expropriation"), para. 3, **CL-0003**; Consolidated Trans-Pacific Partnership Text, Chapter 9, Annex 9-B ("Expropriation"), para. 3, **CL-00066**.

benefit of its investments in the two Project.[1144] Whilst there was no formal transfer of title or outright seizure of the title held in these investments, the economic impact of the impugned decisions was so severe that it resulted in the "substantial deprivation" of the economic value of the investments.[1145]

763. As explained in above the Claimant made qualified investments under the relevant definitions of the NAFTA and the USMCA, as it owns and controls a series of enterprises incorporated in Canada (notably Symbio) through its 100%-owned subsidiaries 9311-0385 Québec Inc. and Symbio GP, both incorporated under the laws of Québec, Canada. Through these corporate entities, the Claimant held further investments in GNL Québec Inc. and Gazoduq Inc., two corporate vehicles established to pursue the GNLQ and Gazoduq Projects.

764. These corporate entities pursued an economic purpose in Québec and in Canada exclusively focussed on the development and preparation of the GNLQ and Gazoduq Projects. Throughout the preparatory work on the GNLQ and Gazoduq Projects, Symbio invested enormous amounts of money, time, energy, effort, assets and other resources to the preparatory phase of the two Projects for their technical/engineering planning as well as the preparation of their legal, financial, commercial, environmental and social aspects.[1146] All of this capital and resources were channelled into Symbio and though it to GNL Québec Inc. and Gazoduq Inc.[1147]

765. Given that the whole is greater than the sum of its parts, the contribution of those assets, resources and expenses generated considerable added value. But for the Respondent's wrongful actions in breach of the NAFTA was capable of yielding significant profit margins and resulting capital gains once the Project entered into the operational phase and reached a break-even point. As noted in the Secretariat Report, but for the Respondent's violations of the NAFTA, the fair market value of the Project (including GNLQ and Gazoduq) as of 30 September 2023 would amount to US$ 1,004,648,000 on the basis of Discounted Cash-Flow valuation methodology.[1148] Notably, prospective investors (including the Government of

---

1144 *See* jurisprudence cited above.

1145 *Pope & Talbot Inc. v. The Government of Canada* (UNCITRAL), Interim Award (26 June 2000), para. 102, **CL-00067** ("[…] under international law, expropriation requires a 'substantial deprivation[']"); *Merrill & Ring Forestry L.P. v. Government of Canada* (UNCITRAL), Award (31 March 2010), para. 145, **CL-00028** ("The standard of substantial deprivation identified in *Pope & Talbot*, and followed by many other decisions, both in the context of NAFTA and other investment protection agreements, is the appropriate measurement of the requisite degree of interference."); *Grand River Enterprises Six Nations, Ltd. and others v. United States of America* (UNCITRAL), Award (12 January 2011), para. 148, **CL-00032** ("NAFTA Tribunals have regularly construed Article 1110 to require a complete or very substantial deprivation of owners' rights in the totality of the investment"); *Glamis Gold, Ltd., v. United States of America* (UNCITRAL), Award (8 June 2009), para. 357, **CL-00035**.

1146 *See* Witness Statement of Vivek Bidwai (21 November 2023), Section VII.

1147 *See* Symbio, Statement of Information on a Partnership in the Québec Enterprise Registry, 6 April 2022 Exh. C-7; Symbio, Certificate of Attestation, 30 September 2022, **Exh. C-0008**, p. 2, Purpose of the company ("Develop, finance, build, own and operate, directly or indirectly, including through its subsidiaries (i) a natural gas liquefaction plan in the Saguenay region, Quebec, Canada and (ii) a gas pipeline for the transportation of natural gas from a connection point in Ontario to the terminal in Saguenay.")

1148 Secretariat Report, **CER-0003**, para. 5.25.

Québec itself) relied upon the DCF methodology for the purposes of assessing the financial feasibility and the expected returns of the Projects and formulating the financial terms of their proposed investment.[1149]

766. [redacted]

767. Thus, as the Project was progressively reaching FID, the fair market value of the companies was consistently increasing. As a result, the decision by the Québec and Federal Government not to authorise the GNLQ Project—in conjunction with the summary termination of the Gazoduq Project—effectively neutralised the economic value of those investments, which were intrinsically and solely made with the purpose of pursuing the two Projects.

768. Once the Québec Government wrongfully decided not to authorise the GNLQ Project and announced that the Gazoduq Project "died" with it, these capital expenses, assets and contributions became worthless: the Claimant and Symbio were left with equipment, studies and other assets that it cannot use for the purposes of another project and cannot sell—or can sell only at substantially discounted prices—which would be *de minimis*:

    a. Among other aspects of their overall investment, [redacted]

1149 Secretariat Report, **CER-0003**, para. 5.25.

1150 *See* Witness Statement of Jim Illich (21 November 2023), para. 171, **CWS-1**.

1151 *See* Witness Statement of Jim Illich (21 November 2023), paras. 185-190, **CWS-1**.

1152 [redacted]

b. Other capital assets, expenses and contributions were equally made worthless. As explained in **Section III,** between 2014 and 2022 GNLQ Limited Partnership and Gazoduq Inc. committed capital in the range of about US$ 120 million for professional fees, salaries and benefits for employees; legal fees; remunerations for external consultants and experts; project promotion and travelling activities; corporate and office expenses; technical and engineering studies (including FEED and Pre-FEED studies); the development of external relations with commercial counterparts (including gas suppliers, off-takers, and potential investors), governmental agencies at the local, provincial and federal level, relations with First Nations and local stakeholders; the acquisition of office equipment and hardware required for the day-to-day activities; and of intangible assets necessary for the Projects, such as computer software, the socio-economic impact assessment and other social, environmental, and related studies and analyses required for the provincial and federal regulatory approval processes.[1153] These investments and expenses were intrinsically linked to the pursuit of the two Projects; as a result, the unlawful termination of the Project made those capital contributions effectively worthless.

769. Additionally, the Claimant was deprived of any reasonably-to-be-expected economic benefit from commercial contracts and agreements which it was in the process of negotiating or had negotiated at the time of the wrongful acts. Indeed, even though the Projects were still at the development phase, GNLQ Limited Partnership and Gazoduq Inc. were able to enter into preliminary supply contracts with gas suppliers in Western Canada (such as [redacted][1154]) as well as term-sheet agreements with off-takers (such as [redacted][1155]). At the time of the impugned measures GNLQ and Gazoduq were in advanced due diligence and extensive negotiations with other commercial third parties who were interested in Gazoduq's pipeline capacity or in off-taking GNLQ's products, and would have concluded profitable commercial agreements before reaching the point of a FID.[1156] That is especially so considering that the conditions in the LNG market changed drastically after the rejection of the Projects: following the invasion of Ukraine by the Russian Federation in February 2022 and the consequent energy crisis in Europe, the demand of European countries for responsibly-sourced LNG significantly increased, placing GNLQ at a unique position to rapidly execute commercial agreements, and ultimately Symbio to derive investment value.[1157] At the same time, the Government of Alberta and [redacted]

1153 Detailed Project Expenditures from Financial Statements (Confidential), January 2022, **Exh. C-00346**.

1154 *See generally* Witness Statement of Vivek Bidwai (21 November 2023), Section IV.B, especially paras. 99-103. *See also* Gas Term Sheet (GNLQ and [redacted]), March 2020, **Exh. C-00132**; 20191218 [redacted] – GNLQ Gas Supply Term Sheet (Executed), **Exh. C-00133**.

1155 *See generally* Witness Statement of Vivek Bidwai (21 November 2023), Section VI, especially paras. 146 to 148, with further references. *See also* 20220728 - GNL Quebec - [redacted] SPA Term Sheet FINAL (Executed), **Exh. C-00144.** LNG SPA (GNLQ and [redacted]), June 2022 **Exh. C-00146.** *See also* 20190225 [redacted] - GNL Quebec SPA Term Sheet (Confidential) – Executed, **Exh. C-00147.**

1156 *Id*.

1157 Witness Statement of Jim Illich (21 November 2023), Section XIII.B., especially paras. 266 to 270, **CWS-1.**

[redacted]

770. As a result of Québec's and Canada's wrongful decisions, GNLQ and Gazoduq were unable to perform those contracts and were deprived of the reasonably-to-be-expected economic benefit of its investments. That is particularly so, considering that following the rejection of the Project, *other* U.S. LNG export terminals quickly entered into LNG offtake agreements with the very same counterparties that GNLQ was in the process of negotiating.[1159] The economic deprivation of the economic value and reasonably-to-be-expected economic benefit amounts to an indirect expropriation.

771. *Second*, the impugned decisions were of such intensity and duration that they amount to an indirect taking. The Claimant is no longer able to use, enjoy or dispose of its investment,[1160] and the taking amounted to a "total impairment."[1161] These actions were ultimately made permanent with the Decision Statement of the Minister of Environment and Climate Change Canada dated 7 February 2022, which refused to authorize the GNLQ Project on equally arbitrary and discriminatory grounds. Taken together, these decisions constitute a "lasting removal" of the use of the economic rights to the investments,[1162] and not just an ephemeral interference with the Claimant's investments.

772. *Third*, the actions taken by Ontario interfered with the Claimant's distinct, reasonable investment-backed expectations.[1163] As outlined in above, the Claimant invested significant amounts of capital in Québec and in Canada between 2014 and 2021 based on long-term, reasonably held expectations fostered by the highest levels of Government. These

---

1158 For more detail on the exchanges with the Albertan Government and their offer to invest in the Project as well as to provide other forms of assistance, *see* Witness Statement of Vivek Bidwai (21 November 2023), Section VII.D.

1159 *See* Witness Statement of Vivek Bidwai (21 November 2023), para. 146**, CWS-2** ("But for Québec's and Canada's arbitrary and discriminatory permit decisions, we would have been able to conclude term sheets (and ultimately binding agreements) over the entirety of our 10.5 Mtpa LNG export capacity as the project was nearing FID. Indeed, since those wrongful decisions many of the customers with whom we were negotiating offtake agreements at the time of Canada's actions have recently signed long-term contracts for LNG with other export terminals in the US or Canada. Given the exceptionally strong demand in the recent years, and the advanced stage of our negotiations, the Project would have also entered into LNG off-take agreements under similar terms.")

1160 *Pope & Talbot Inc. v. The Government of Canada* (UNCITRAL), Interim Award (26 June 2000), para. 102, **CL-00067** (citing *Harvard Draft Convention on the International Responsibility of States for Injury to Aliens*, Article 10(3) and the American Law Institute, RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1986), § 712, Comment (e)).

1161 *CMS Gas Transmission Company v. Argentine Republic* (ICSID Case No. ARB/01/8) Award (12 May 2005), para. 262, **CL-00068,** cited by Canada in *Windstream Energy, LLC v. Government of Canada* (UNCITRAL), Government of Canada, Counter-Memorial (20 January 2015), para. 477, **CL-00058**.

1162 *S.D. Myers, Inc. v. Government of Canada* (UNCITRAL) Partial Award (13 November 2000), para. 283, **CL-0007**. *See also Fireman's Fund Insurance Company v. The United States* (ICSID Case No. ARB(AF)/02/1), Award (17 July 2006), para. 176(d), **CL-00069**; *Glamis Gold, Ltd., v. United States of America* (UNCITRAL), Award (8 June 2009), para. 360, **CL-00035**.

1163 *See, e.g., Glamis Gold, Ltd., v. United States of America* (UNCITRAL), Award (8 June 2009), para. 356, **CL-00035**.

expectations arose from the consistent, specific and repeated reassurances and expressions of support by the Québec and Federal Govermment towards Symbio. As noted above:

a. Between 2013 and 2020, Québec and Federal Government officials and local authorities made explicit and consistent representations of support and encouragement towards the Claimant and Symbio, inducing them to make significant investments in the Project, including through material expressions of support, commercial arrangements, letters of support and encouragement, and a serious interest to invest in the Project on multiple occasions.

b. At the same time, Québec and Federal Government officials made a series of representations directly to GNLQ (but also to the wider public) that they considered natural gas to be a "transitional source of energy", and that they considered GNLQ's business model to be aligned with the Government's policy to reduce GHG emissions by displacing coal and oil with low-carbon natural gas in other countries.

c. Similarly, Québec and Federal Government officials created the legitimate expectation on the part of the Claimant and Symbio that the increased maritime traffic that would result from the operation of the GNLQ's export terminal was consistent with the Government's policy for the economic development of the Port of Saguenay, whereas any impact on marine mammals that could arise therefrom could effectively be managed through reasonable and appropriate mitigation measures.

773. These repeated and specific expressions of support representations played a pivotal role in the Claimant's decision to invest. Without those representations, the Claimant would not have committed substantial amounts of capital, resources, personal efforts and time to pursue the Project over nearly a decade. As Jim Illich confirms:

> "We honestly believed that these supportive public statements, alongside the Government's tangible offer to invest [redacted] in our Project—after seven months of extensive due diligence by its specialized investment arm—were compelling evidence that the Government supported the Project. I cannot possibly think that a government would be prepared to make such comments and commit [redacted] to a Project that it considered to be incompatible with the environmental policies which it had expressly proclaimed and adopted. Our impression further was bolstered by the multiple gestures made by the Government in its previously-issued integrated letters of support to support the Project, as well the repeated assurances and representations that were made to me in the course of private discussions by senior politicians at the local, Provincial and Federal level."[1164]

774. The impugned actions taken by Québec and Federal Government of Canada interfered with these distinct, reasonable investment-backed expectations, and substantially deprived the Claimant and Symbio of their investment, to their detriment. The Government of Québec

[1164] Witness Statement of Jim Illich (21 November 2023), para. 191, **CWS-1**.

suddenly moved the goalposts in the regulatory approval process by enforcing against GNLQ three so-called "core criteria" which contradicted not only the position that the MELCC had taken at the beginning of this process but also specific legitimate expectations the Government had created on the Claimant's part, and upon which the Claimant had legitimately relied for the purposes of its investment decision. The Govertnment weaponized the environmental review process, to "kill" the Project. By frustrating the legitimate expectations that it had previously fostered at the highest levels of government, the Province of Québec caused severe economic harm to the investments as the Claimant was effectively deprived of the economic value of its contributions, and of the reasonably-to-be-expected profit of such investments.

775. *Thirdly*, this *de facto* taking cannot be justified under the police powers doctrine at international law. As a preliminary matter, the Claimant accepts that the police powers doctrine applies to regulatory measures of general application adopted by States to protect "public order, health or morality".[1165] As the tribunal in *Methanex v. Mexico* held:

> "[A] non-discriminatory regulation for a public purpose, which is enacted in accordance with due process, and which affects, *inter alios*, a foreign investor or investment is not deemed expropriatory and compensable unless specific commitments had been given by the regulating government to the then putative foreign investor contemplating investment that the government would refrain from such regulation."[1166]

776. As Canada itself explained in 2015:

> "[A] non-discriminatory measure, designed to protect legitimate public welfare objectives such as health, safety and the environment, is not an indirect expropriation except in the rare circumstance where its impacts are so severe in

---

1165 See, e.g., *Harvard Draft Convention on the International Responsibility of States for Injury to Aliens* (1961) reproduced in (1961) 55(3) *American Journal of International Law*, 548, at Article 10(5) ("An uncompensated taking of property of an alien or a deprivation of the use or economic enjoyment of property of an alien which results from the execution of the tax laws; from a general change in the value of the currency; from the action of the competent authorities of the State in the maintenance of public order, health, or morality; or from the valid exercise of belligerent rights; or is otherwise incidental to the normal operation of the laws of the State shall not be considered wrongful, provided: (a) it is not a clear and discriminator violation of the law of the State concerned; (b) it is not the result of a violation of any provision of Articles 6 to 8 of this Convention; (c) it is not an unreasonable departure from the principles of justice recognized by the principal legal systems of the world; and (d) it is not an abuse of the powers specified in this paragraph for the purpose of depriving an alien of his property." **CL-00070.** *See also* American Law Institute, *Restatement (Third) Foreign Relations of the United States* (1987), vol. 1 ("A State is not responsible for loss of property or for other economic disadvantage resulting from bona fide general taxation, regulation, forfeiture for crime, or other action of the kind that is commonly accepted as within the police powers of states, if it is not discriminatory"), **CL-00071**; OECD, *"Indirect Expropriation" and the "Right to Regulate" in International Investment Law*, OECD Working Paper 2004/4 (September 2004), p. 10 ("[i]t is an accepted principle of customary international law that where economic injury results from a *bona fide* non-discriminatory regulation within the police power of the State, compensation is not required."), **CL-00072.**

1166 *Methanex Corporation v. United States of America* (UNCITRAL), Final Award on Jurisdiction and Merits (3 August 2005), Part IV, Chapter D, para. 4, **CL-00031**, cited by the Government of Canada in describing the operation of police powers in 2008. *See Chemtura Corporation v. Government of Canada* (UNCITRAL) Government of Canada's Counter-Memorial (20 October 2008), para. 586, **CL-00073**. *See also Saluka Investments B.V. v. The Czech Republic* (UNCITRAL), Partial Award (17 March 2006), para. 255 ("It is now established in international law that States are not liable to pay compensation to a foreign investor when, in the normal exercise of their regulatory powers, they adopt in a non-discriminatory manner *bona fide* regulations that are aimed to the general welfare."), **CL-00074**.

> the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith. Such a principle is also reflected in the police powers doctrine which applies to expropriations which are carried out by States to protect public health and the environment."[1167]

777. That being said, it is the Claimant's position that the police power doctrine must be narrowly construed by reference to certain limitations which ensure that the host State does not invoke this doctrine in an abusive or pretextual manner.

778. In *Certain Iranian Assets*, the International Court of Justice recognised that, as a matter of general international law, "the *bona fide* non-discriminatory exercise of certain regulatory powers by the government aimed at the protection of legitimate public welfare is not deemed expropriatory or compensable".[1168] Nevertheless, the Court was careful to add that "[g]overnmental powers in this respect . . . are not unlimited"; on the contrary, "[r]easonableness is one of the considerations that limit the exercise of the governmental powers in this respect".[1169]

779. In assessing the reasonableness of the measure, the Court applied a three-pronged test. Namely, whether the measure "does not pursue a legitimate public purpose";[1170] whether there is an "appropriate relationship between the purpose pursued and the measure adopted";[1171] and whether "its adverse impact is manifestly excessive in relation to the purpose pursued", in the sense that "its negative impact on the exercise of the right in question must not be manifestly excessive when measured against the protection afforded to the purpose invoked."[1172] On that basis, the Court held that the US exceptions to the sovereign immunity of Iranian State-owned entities were "unreasonable" and beyond the legitimate exercise of "police powers", and consequently amounted to an indirect expropriation under the Iran-USA Treaty of Amity.

780. In the framework of investment arbitration, numerous tribunals have similarly held that the exercise of police powers must be subject to rigorous scrutiny. In *Pope & Talbot v. Canada*, for example, a NAFTA tribunal rejected Canada's argument that measures adopted under the "police powers" doctrine are automatically exempted from scrutiny:

> "Canada appears to claim that, because the measures under consideration are cast in the form of regulations, they constitute an exercise of 'police powers,' which,

---

1167 *Windstream Energy, LLC v. Government of Canada* (UNCITRAL), Government of Canada, Counter-Memorial (20 January 2015), para. 495, **CL-00058**.

1168 *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment, 30 March 2023 (not yet reported), para. 185, **CL-00075**.

1169 *Id.*, para. 186, **CL-00075**, citing *Bischoff Case*, 1903, UNRIAA, Vol. X, p. 420.

1170 *Id.*, para. 147.

1171 *Id.*, para. 148.

1172 *Id.*, para. 149, citing *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009*, pp. 249-250, para. 87, **CL-00076**.

> if non-discriminatory, are supposedly beyond the reach of the NAFTA rules regarding expropriations. While the exercise of police powers must be analysed with special care, the Tribunal believes that Canada's formulation goes too far. Regulations can indeed be exercised in a way that would constitute creeping expropriation."[1173]

781. In this connection, investment tribunals have held that a measure ostensibly adopted in the exercise of the host State's "police powers" must satisfy a number of conditions, including the principle of proportionality,[1174] non-discrimination and due process of law.[1175] For example, in *ADC v. Hungary* the tribunal affirmed that:

> "basic international law principles that while a sovereign State possesses the inherent right to regulate its domestic affairs, the exercise of such right is not unlimited and must have its boundaries. As rightly pointed out by the Claimants, the rule of law, which includes treaty obligations, provides such boundaries."[1176]

782. Similarly, in *Mohamed Abdel Raouf Bahgat v. Egypt* the tribunal recognised that:

1173 *Pope & Talbot Inc. v. The Government of Canada* (UNCITRAL), Interim Award (26 June 2000), para. 99, **CL-00067.**

1174 *See e.g. Azurix Corp. v. Argentina*, ICSID Case No. ARB/01/12, Award, 14 July 2006, paras. 310-312, **CL-00077** (considers that proportionality analysis provides "useful guidance" for the purpose of determining whether regulatory actions would be expropriatory); *PL Holdings S.a.r.l. v. Poland*, SCC Case No. V 2014/163, Partial Award, 28 June 2017, paras. 355- 391, **CL-00078_** (applying the principle of proportionality to reach the conclusion that Poland's action were disproportionate); *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, para. 189 and 195, **CL-00079** (finds that measures having a social or general welfare purpose must be accepted without any imposition of liability, "except in cases where the State's action is obviously disproportionate to the need being addressed."); *Novenergia II - Energy & Environment (SCA), SICAR v. Spain*, SCC Case No. 2015/063, Final Award, 15 February 2018, paras. 732–737, especially paras. 734 *et seq.*, **CL-00080** (finds that the measures do not satisfy the conditions for the police powers doctrine, as they are "demonstrably disproportionate and unreasonable."); *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010, para. 197, **CL-00081** (holds that the pesification of the contract was a *bona fide* regulatory measure of general application, which was "reasonable in light of Argentina's economic and monetary emergency and proportionate to the aim of facing such an emergency."); *Olympic Entertainment Group AS v. Ukraine*, PCA Case No. 2019-18, Award, 15 April 2021, para. 90, **CL-00082** ("the condition of proportionality must be included in the test for a valid exercise of the police powers doctrine.")

1175 *El Paso Energy International Company v. Argentina*, ICSID Case No. ARB/03/15, Award, 31 October 2011, para. 240, **CL-00083** ("a general regulation is a lawful act rather than an expropriation if it is non-discriminatory, made for a public purpose and taken in conformity with due process"); *Les Laboratoires Servier, S.A.S., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Republic of Poland*, UNCITRAL, Award, 14 February 2012, para. 569, **CL-00084** ("a host state's regulatory and/or administrative actions must be taken (i) in good faith, (ii) for a public purpose, (iii) in a way proportional to that purpose, and (iv) in a non-discriminatory manner."); *Bank Melli Iran and Bank Saderat Iran v. Bahrain*, PCA Case No. 2017-25, Final Award, 9 November 2021, para. 637, **CL-00085** ("When scrutinizing the purported regulatory conduct, the Tribunal must focus its analysis on the evidence (or the lack thereof) of the connection between the impugned measures and the investor's unlawful activities. It should also analyze whether the measures were arbitrary, discriminatory, disproportionate and contrary to the requirements of due process.")

1176 *ADC Affiliate Ltd and ADC & ADMC Management Ltd v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), para. 423, **CL-00086.**

> "the police power defence is not *carte blanche*; a State's actions must be justified, meet the international standards of due process, and *inter alia* be proportional to the threat to public order to which it purports to respond."[1177]

783. Canada has admitted as much in its submissions in another NAFTA matter. In the case of *Chemtura v. Canada*, the Respondent admitted that:

> "the police powers doctrine is meant to 'operate within certain limits so that it is not abused by governments who might enact police measures as a pretext to an expropriation.' . . . Canada explicitly acknowledges that the police powers doctrine is not 'absolute in nature' and that it has the potential to be abused by unscrupulous governments. However, when the four checks and balances are applied to this case - i) non-arbitrary; ii) non-discriminatory; iii) not excessive; and iv) good faith - it is clear that [the impugned measure] was a legitimate exercise of Canada's police power."[1178]

784. In the present case, the actions taken by Québec fail to meet any of these requirements. A consideration of these factors demonstrates that Québec's measures were not justifiable, even on Canada's own test.

a. *First*, the measures in question did not amount to reasonable, *bona fide* governmental regulation taken in the public interest, nor were they designed to protect legitimate public welfare objectives such as health, safety and the environment. As set out in greater detail below, several aspects Québec Government and the Federal Government's conduct were tainted by and manifest arbitrariness, and thus amount to a breach of NAFTA Article 1105(1). Québec acted in a manifestly arbitrary fashion when, on 24 March 2021, it introduced at the eleventh hour three additional "core criteria" for the approval of the GNLQ Project that had never before been articulated, despite more than five years years of environmental assessment. Moreover, the MELCC's final environmental assessment report arbitrarily ignored GNLQ's rigorously produced evidence and the conclusions of its own experts with regard to the fulfilment of such criteria. Besides, the Report's scepticism about the contribution of LNG to the worldwide energy transition also arbitrarily ignored Québec's longstanding position on LNG as a source of energy transition and GHG emission reduction and the specific representations made to the Claimant to that effect. the sudden decision to dismiss the GNLQ Project on the basis of alleged impacts on beluga whales was also manifestly arbitrary, and contradicted specific prior representations made to the Claimant. The MELCC reliance on alleged concerns about social acceptability were also manifestly arbitrary, as it introduced a drastic change of course. Finally, by declaring that the Gazoduq Project "died" together with GNLQ and that

---

1177 *Mohamed Abdel Raouf Bahgat v. Arab Republic of Egypt I*, PCA Case No. 2012-07, Final Award, 23 December 2019, para. 230, **CL-00087.**

1178 *Chemtura Corporation v. Government of Canada*, UNCITRAL, Respondent's Rejoinder Memorial (10 July 2009), paras. 280-281, **CL-00088;** and Canada's Counter-Memorial (20 October 2008), para. 594, **CL-00089** ("[f]actors to be considered in this context include whether the measure is arbitrary, discriminatory, excessive, and whether it was adopted in good faith.")

there would not be a second BAPE procedure to evaluate the Gazoduq Project, the Government mirrored the manifestly arbitrary conduct it meted out to GNLQ.

b. *Second*, even if the measures *were* introduced for a legitimate public purpose (*quod non*), the actions in dispute were manifestly arbitrary and discriminatory. As outlined above the Québec and the Federal Governments' environmental assessment processes were marred by obvious double-standards, notably with regard to their consideration of GHG emissions and of shipping impacts on belugas. While the Québec and Federal Governments relied on these criteria to refuse GNLQ, they have nonetheless assessed and approved a number of comparator projects owned by proponents from Canada (including Québec) or from third countries by adopting far more lenient approaches to the same environmental considerations (indeed, in various cases failing to consider them at all).

c. [redacted]

[redacted]

In effect, the MELCC singled out the GNLQ Project and applied environmental criteria and processes that were substantially different compared to those applied to other project proponents, without any legitimate public purpose justifying this differentiation.

1179 [redacted]

1180 [redacted]

d. *Third*, the measures were "excessive" as – in Canada's own terms – the measures were "so out of bounds as to compel the inference that an expropriation had occurred."[1181] The negative impact of the measures (i.e., the Project's outright rejection) was manifestly disproportionate to its purported objective, as there were less drastic means to addressed the concerns professed by the MELCC. Notably, in assessing large-scale industrial projects in the immediate vicinity of the Saguenay, the Cabinet has adopted less drastic approaches to addressing environmental concerns; for example, it has granted environmental approvals subject to reasonable environmental conditions.[1182] As noted in the Duchaine Report, in light of the past practice of the MELCC in analogous environmental review processes, GNLQ had a legitimate expectation that the MELCC that the Ministry would cooperate for the authorisation of the Project in the usual course of action, « le tout sous réserve de modifications raisonnables pour assurer son acceptabilité environnementale ».[1183] Instead, the MELCC adopted the most onerous and drastic approach, applying draconian criteria such as the "zero tolerance" in terms of subaquatic noise, in perfect knowledge that GNLQ would not be able to meet them.

e. In this context, it is important to recall that the Claimant had repeatedly demonstrated its willingness to comply with the highest environmental standards in line with the applicable regulatory framework in Québec. In fact, well before Minister Charette announced the newly-invented "core criteria" in March 2021, at the very end of the environmental review process, GNLQ had already finalised its plans to achieve carbon neutrality,[1184] and had developed and announced a detailed "Charter of Environmental Commitments for the Protection of Marine Mammals", which was carefully based on the four strategic axes contained in the Government of Canada's proposed 2019 Action Plan to reduce noise around the beluga whale,[1185] including through technical

---

1181 *Chemtura Corporation v. Government of Canada* (UNCITRAL) Government of Canada's Counter-Memorial (20 October 2008), para. 623, **CL-00073**.

1182 *See*, for example, Gouvernement du Québec, Décret 35-2019, 16 janvier 2019, Concernant des modifications aux conditions et modalités de la contribution financière d'un montant maximal de 185 000 000$ sous forme de prêts et d'une prise de participation dans Métaux BlackRock inc. par Investissement Québec, octroyée en vertu du décret numéro 1243-2018 du 17 août 2018, *Gazette Officielle du Québec*, 1 May 2019, 151, No. 19, pp. 1417-1420; Gouvernement du Québec, Décret 401-2020, 1er avril 2020, Concernant la délivrance d'une autorisation à Énergir, s.e.c. pour le projet de desserte en gaz naturel de la zone industrialo-portuaire de Saguenay sur le territoire de la ville de Saguenay, *Gazette Officielle du Québec*, 22 April 2020, 152, No. 17, pp.1588-1590.

1183 Duchaine Report, 21 November 2023, pp. 46-47**, CER-1**.

1184 *See* internal email exchange dated 15 Septembre 2020 entitled « Carboneutralité - documents finaux », **Exh. C-00405**, with attachments « Chartes et Plan d'actions. » **Exh. C-00406** « Programme d'atteinte de la carboneutralité » **Exh. C-00407** and « Approche du programme de carboneutralité » **Exh. C-00408**.

1185 GNLQ, « Charte d'engagements environnementaux pour la protection des mammifères marinsDu principe de précaution à la gestion adaptative », **Exh. C-00409**. The Charter was intended to guide the company's actions in terms of managing the possible risks of its activities on marine mammals, particularly the St. Lawrence beluga, including through: (a) the advancement of scientific knowledge and innovations technologies; (b) the adoption of best practices; (c) awareness raising; and (d) consultation with stakeholders in the field.

measures aimed at minimising subaquatic noise of LNG vessels.[1186] Despite this, the Québec Government adopted the most radical approach, rejecting the Project without taking into consideration the proposed mitigation and adaptation measures. The decision was disproportionate and at variance with the approach taken by the Province *vis-à-vis* industrial projects before and after GNLQ.

f. *Finally*, the measures in question were not adopted through a regular decision-making process and in a manner that is consistent with the NAFTA. As noted by both Me Duchain (in respect of Québec) and Mr. Northey (in respect of Canada), both levels of government failed to exercise their discretionary power of approval *vis-à-vis* the Claimant and Symbio in a lawful manner, in that the exercise of that discretion was tained by gross procedural irregularities, including an excess of jurisdiction and manifest negative targeting of the investor.

785. For these reasons, the Claimant submits that Québec's and Canada's actions amounted to an indirect expropriation of the Claimant's investments in GNLQ and Gazoduq. The measures amounted to a permanent, substantial deprivation of the Claimant's economic interests in these investments, contrary to reasonable investment-backed expectations. The character of the measures taken cannot be justifiable under the police powers doctrine: there was no legitimate public purpose for Québec's measures, and the measures not taken in good faith or in accordance with due process. The measures amount to an indirect expropriation under any test.

786. Moreover, Canada's actions constituted an unlawful indirect expropriation, as it failed to undertake its measures in conformity with the NAFTA and customary international law for the reasons set out in the following section.

2. Canada's Expropriation of the Claimants' Investment Was Unlawful

787. An expropriation is an unlawful breach of Article 1110 of the NAFTA unless it meets the following criteria:

a. it is for a public purpose;
b. it is conducted on a non-discriminatory basis;
c. it is conducted in accordance with due process of law and Article 1105(1); d
d. compensation is paid in accordance with Articles 1110(2) to (6) of the NAFTA.

788. These four conditions are cumulative, meaning that if any one of those conditions is not met, there is a breach and therefore the expropriation is unlawful.[1187]

1186 Witness Statement of Keith Bainbridge (20 November 2023), Section VI ("Consulting on Noise-Mitigation/Silencing Measures"), **CWS-4.**

1187 *See* UNCTAD International Investment Agreements: Key Issues, Volume 1 (2004), pp. 239-240, **CL-00090**; *BP Exploration Company (Libya) Limited v. Government of the Libyan Arab Republic*, Award (Merits) (10 October 1973), 53 ILR 297, p. 32, **CL-00091** (non-discriminatory); Muthucumaraswamy Sornarajah, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT (2nd ed. 2004), p. 395, **CL-00092** (public purpose, non-discriminatory, compensation); Irmgard Marboe, CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW (Oxford University Press 2009), para. 3.05, **CL-00093**; Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL TRIBUNALS (1953, republished

789. As explained below, Canada has failed to fulfil all of these conditions, and thus the expropriation of the Claimant's investment is unlawful under the NAFTA, giving rise to an obligation to provide full reparation for any financially assessable damage caused.

a. Canada's Indirect Expropriation Was Not for a Public Purpose

790. Article 1105(1)(a) requires that NAFTA Parties not expropriate any asset of an investor except for a public purpose. As stated by the ILC:

> "[T]he power to expropriate should be exercised only when expropriation is necessary and is justified by a genuinely public purpose or reason. If this *raison d'être* is plainly absent, the measure of expropriation is "arbitrary" and therefore involves the international responsibility of the state."[1188]

791. While the NAFTA does not define "public purpose", whether or not an expropriation is for a public purpose is to be determined by the Tribunal, and not the State. As noted by Professor Bin Cheng in his classic work, "General Principles of Law as Applied by International Tribunals":

> "In case of a dispute, according to the Permanent Court of Arbitration, an international tribunal is competent to, and should, decide whether the "taking" is justified by public needs."[1189]

792. Professor Bin Cheng emphasised that a tribunal does not enquire into the merits of the public purpose – that is a matter for the State. Rather, a tribunal's task is to consider the facts as to whether the expropriation is for a public purpose.[1190] It is not merely enough for the State to declare a public purpose, it must also be genuine.[1191] On that basis, arbitral tribunals have found an expropriation to be illegal where it lacked a legitimate public purpose.[1192]

2006), pp. 49-51, **CL-00094**. *See also Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award (22 April 2009), para. 98, **CL-00095**; *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award (1 June 2009), para. 428, **CL-00096**; *Bernhard von Pezold and others v. The Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), paras. 491-503, **CL-00097**.

1188 International Law Commission, Documents of the Eleventh Session: Report of the Commission to the General Assembly on State Responsibility, Fourth Report by F.V. Garcia Amador, UN Doc. A/CN.4/119 (1959), **CL-00098**.

1189 Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL TRIBUNALS (1953, republished 2006), p. 38, **CL-00094** (citing from *Norwegian Shipowners' Claims (Norway v USA)*, Award (13 October 1922), 309, at p. 332).

1190 Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL TRIBUNALS (1953, republished 2006), p. 39, **CL-00094**.

1191 *See ADC Affiliate Ltd and ADC & ADMC Management Ltd v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), paras. 432-433, **CL-00086** ("treaty requirement for 'public interest' requires some genuine interest of the public. If mere reference to 'public interest' can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless since the Tribunal can imagine no situation where this requirement would not have been met.").

1192 *See, e.g., British Petroleum v. Libya*, Award, 10 October 1973 and 1 August 1974 (1979) 53 ILR 297, 329 ("the taking by the Respondent of the property, rights and interests of the Claimant clearly violates public international law as it was made for purely extraneous political reasons and was arbitrary and discriminatory in character."); *ADC Affiliate Limited and ADC & ADM Management Ltd v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), paras. 432-

793. The commentary to the OECD Draft Convention on the Protection of Foreign Property (1967) further notes that a mere ostensible public purpose is not enough to constitute a lawful expropriation. In particular, it states that:

> "seizure undertaken ostensibly for public purposes but, in fact, to be used by persons connected therewith solely for private gain is unlawful and gives rise to a claim for damages."[1193]

794. In *Tecmed v. Mexico*, the tribunal accepted that deference ought to be given to a State for policies in the public interest, but ultimately found that there was no nexus between the declared public purpose and the relevant circumstances. At the outset of its assessment, the tribunal stated:

> "[T]he Arbitral Tribunal will consider, in order to determine if they are to be characterized as expropriatory, whether such actions or measures are proportional to the public interest presumably protected thereby and to the protection legally granted to investments, taking into account that the significance of such impact has a key role upon deciding the proportionality. Although the analysis starts at the due deference owing to the State when defining the issues that affect its public policy or the interests of society as a whole, as well as the actions that will be implemented to protect such values, such situation does not prevent the Arbitral Tribunal, without thereby questioning such due deference, from examining the actions of the State in light of Article 5(1) of the Agreement to determine whether such measures are reasonable with respect to their goals, the deprivation of economic rights and the legitimate expectations of who suffered such deprivation. There must be a reasonable relationship of proportionality between the charge or weight imposed to the foreign investor and the aim sought to be realized by any expropriatory measure."[1194]

795. Where an expropriation is challenged for lacking a legitimate public purpose, the respondent must explain the public purpose for which the expropriation was undertaken and also satisfy a *prima facie* burden of proving that the acquisition of the particular property was "reasonably related" to the fulfilment of that purpose.[1195] In *Certain Iranian Assets*, the ICJ

---

433 and 476 ("the expropriation of the Claimants' interest constituted a depriving measure under Article 4 of the BIT and was unlawful as: (a) the taking was not in the public interest"), **CL-00086**; *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award (1 June 2009), para. 432, **CL-00096**.

1193 Commentary on Article 3, OECD 1967 "Draft Convention on the Protection of Foreign Property", p. 19, **CL-00099** (also relying, as Professor Cheng did, on *Walter F. Smith Case* (1929)).

1194 *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award (29 May 2003), para. 122, **CL-00064**. *See also Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award (15 April 2016), para. 296, **CL-000100** ("While the objective is not to review the effectiveness of the measures, the government's failure to advance a declared purpose may serve as evidence that the measure was not taken in furtherance of such purpose. Thus, the idea is to determine whether the measure had a reasonable nexus with the declared public purpose or in other words, was at least capable of furthering that purpose.").

1195 *British Caribbean Bank Limited (Turks & Caicos) v. Belize*, PCA Case No. 2010-18 (UNCITRAL), Award (19 December 2014), para. 241, **CL-000101**. *See also Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Award (21 July 2017) para. 984 ("the analysis of whether the expropriation was in the public interest must go beyond a State's declaration."), **CL-000102**.

explained that the test of "reasonableness" looks at whether the measure "does not pursue a legitimate public purpose"[1196] and whether there is an "appropriate relationship between the purpose pursued and the measure adopted".[1197] That is especially so in situations of blatant misuse of the power to set public policies.[1198]

796. Canada in this case is unable to meet any of these tests. It may be true the Québec Government invoked the aim of reducing of GHG emissions, the protection of the beluga whales from subaquatic noise attributable to marine traffic and social acceptability as the grounds for the rejection of the two Projects. However, the real purpose behind the rejection of the Projects was to serve the political interests of the Coalition Avenir Québec, and the political tensions between the provincial and federal government. The measures taken by the Québec and Federal Government were fundamentally arbitrary and did not pursue a genuine public policy objective.

797. The disingenuous character of the rejection of the GNLQ Project on environmental grounds is evidenced in the fact that the Cabinet Decision of 21 July 2021 simply disregarded the conclusion by MELCC's own specialist on GHG emissions and climate change impacts. That specialist, in a report produced by MELCC in June 2021, expressly found that GNLQ had adequately responded to the newly-stated and late-announced criteria concerning GHG emissions.[1199] Faced with such unambiguous, science-backed conclusions, the government simply chose to ignore its own experts and pursue its political agenda to reject GNLQ

798. Moreover, the Government chose to ignore the evidence submitted by the proponent on the social acceptability of the Project, and indeed letters of support from local stakeholders who unambiguously supported the Project.

799. What Symbio suspected to be arbitrary political decisions at the time was confirmed in the months that followed the rejection by first the Québec, and then the Canadian Federal Government.[1200] Indeed, following the tragic events in Ukraine which intensified the need for LNG supply to Europe, Symbio approached the Government of Québec and the Federal Government of Canada in an attempt to revive the Projects, engaging in candid discussions with senior government representations. In the course of these discussions, senior Québec

---

1196 *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment, 30 March 2023 (not yet reported), para. 147, **CL-00075.**

1197 *Id.*, para. 148.

1198 *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, para. 294, **CL-000100**.

1199 Avis des experts - Recueil des avis issus de la consultation auprès des ministères et organismes, Complexe de liquéfaction de gaz naturel à Saguenay - Projet Énergie Saguenay, Dossier 3211-10-021, 8-17 juin 2021 (Doc. No. PR9.3), p. 48, **Exh. C-0032**. (Translation to English from French original: "[i]n sum, we consider that the project is not incompatible with Québec's GHG emission reduction objectives or with the GHG emission reduction requirements set out in the Paris Agreement").

1200 In *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award (15 April 2016), para. 296, **CL-000100,** the tribunal acknowledged that in determining whether a measure was adopted "for" a public purpose, it must consider all the relevant circumstances, including the government's post-expropriation conduct.

and Canadian officials frankly admitted that the initial decisions at both the provincial and the federal levels had been prompted by reasons of political expediency, rather than by any fundamental environmental concerns.[1201] In the course of separate discussions held with Symbio representatives in March, April and May 2022, multiple high-ranking officials from the Québec and Canadian Federal Governments separately confirmed Symbio's suspicions that, in line with the substance of the Liberal Party of Canada's 2021 campaign pledge, the July 2021 and February 2022 refusals were "purely political" and that there were "no environmental showstoppers for [the] project".[1202]

800. For instance, in a discussion held on 2 May 2022 between GNLQ President Tony Le Verger and François Pouliot (Economic Advisor to the Office of the Québec Prime Minister) the latter admitted:

> « en toute honnêteté, il était facile pour nous de nous cacher derrière des raisons environnementales pour rejeter le projet, mais nous ne voulions tout simplement pas subir la pression d'un projet qui n'était pas sûr d'obtenir son financement à long terme ».[1203]

801. A few weeks later on 19 May 2022, Premier Legault gave a radio interview where he acknowledged that the Project's rejection had nothing to do with environmental concerns. Notably, the Cabinet Decision of 21 July 2021 listed as one of the two reasons for the Project's refusal "the effect of navigation on the beluga population in the Saint-Laurent estuary which is an endangered faunal species designated by virtue of the Law on endangered or vulnerable species". By contrast, the Premier bluntly admitted that:

> "I don't think that [increased tanker traffic] was the main reason. The main reason is that it is natural gas, natural gas that is not even produced in Québec, that comes from Western Canada, that we don't really need here in Québec, and that we would eventually need to send by boat to Europe".[1204]

802. Presumably to avoid the criticism that the Québec Government might not support more economic development projects on the Saguenay River, Premier Legault expressed his support for other industrial projects in the region (which would inevitably and substantially increase tanker traffic and, therefore, resulting noise on the river).[1205] This admission reinforces the conclusion that the new criteria only applied to GNLQ and had been invented

---

1201 Witness Statement of Jim Illich (21 November 2023), Section XIII.C**, CWS-1**.

1202 *Id.*, paras. 277 and 287.

1203 Witness Statement of Tony Le Verger (21 November 2023), para. 258, **CWS-3.**

1204 Radio Station CKYK-FM 95.7, "Le show du matin" (radio interview of 19 May 2022), **Exh. C-0033.**

1205 *See* Radio Station CKYK-FM 95.7, "Le show du matin" (radio interview of 19 May 2022), **Exh. C-0033**. Premier Legault stated that: « Non, moi, écoutez, je suis toujours pour l'équilibre. On a annoncé d'ailleurs des investissements au port, et ici. Il y a des projets comme Black Rock. C'est complexe, à cause de l'actionnariat et des anciens actionnaires mais moi je crois dans ce projet-là. Puis, tous les projets industriels sont bienvenus ». (Translation to English from French transcript: "I am always for balance. Besides, we have announced investments at the port and here, there are projects like Blackrock. It is complex with all the shareholding issues and the former shareholders, but I believe in this project. All industrial projects are welcome.")

to allow for the targeted rejection of the GNLQ Project on political, rather than environmental, science-based, considerations.

803. In reality, in the spring of 2022 the office of the Premier of Québec had agreed to re-consider the Project, on condition that (i) the federal government committed publicly to reverse the decision as a matter of national interest and security, such that the Québec government would appear "forced" by the federal government to pursue the project.[1206] Nothing had anything to do with alleged environmental concerns.

804. Besides, Mr. Pouliot's explanation ignores the fact [redacted] Québec continued to encourage and to tout the Projects.

805. As a result of these factors, the requirement of a legitimate public purpose under Article 1110(1)(a) is clearly unsatisfied. On this basis alone, the expropriation is unlawful and gives rise to an obligation to provide reparation for the damage caused thereby.

b. Canada's Indirect Expropriation Was Conducted on a Discriminatory Basis

806. Article 1110(1)(b) of the NAFTA requires that – in order to be lawful – an expropriation must be conducted on a non-discriminatory basis.

807. The phrase "on a non-discriminatory basis" must be interpreted broadly to encompass conduct that results either in *de jure* or *de facto* discrimination as compared to the treatment afforded to domestic or foreign investors operating in similar circumstances. This interpretation is supported by the text of Articles 1102 and 1103 of the NAFTA, which serve as relevant context.

808. This broad interpretation is confirmed in arbitral practice. In *GAMI Investments v. Mexico* the NAFTA tribunal examined (i) whether the claimant was in like circumstances as those who were not expropriated; (ii) whether the claimant had received less favourable treatment through the impugned measure; (iii) whether "the measure was plausibly connected with a legitimate goal of policy"; and (iv) whether the measure was applied in a discriminatory manner or was "a disguised barrier to equal opportunity."[1207] Similarly, non-NAFTA arbitral tribunals which have interpreted non-discrimination as a condition for the legality of an expropriation have held that the measure in question must not be pursued in a manner that directly distinguishes or affects differently domestic and foreign investors who are "similarly situated" without a legitimate justification, in violation of the foreign investor's legitimate

1206 Witness Statement of Jim Illich (21 November 2023), Section XIII.C, **CWS-1**.

1207 *GAMI Investments, Inc. v. United Mexican States* (UNCITRAL), Final Award (15 November 2004), para. 114, **CL-00047**.

expectations.[1208] Moreover, in *LETCO v. Libya* the tribunal held that Libya's conduct amounted to unlawful discrimination as the claimant had received less favourable treatment as compared to other foreign-owned companies which had received areas of concession taken away from LETCO.[1209]

809. It follows that Article 1110(1)(b) must be interpreted broadly, in a manner consistent with the obligations set out in Articles 1102 and 1103 of the NAFTA.

810. As detailed in above, in the present case the Québec Government has targeted and discriminated against a specific class of investors, in breach of Articles 1102 and 1103 of the NAFTA. The newly-espoused "core criteria" set forth by arbitrarily Minister Benoit Charette on 24 March 2021 undoubtedly singled out the Claimant, and there was no legitimate justification for such targeting.

811. As a result of these factors, Article 1110(1)(b) is clearly unsatisfied. On this basis alone, the expropriation is unlawful and gives rise to an obligation to provide reparation for the damage caused thereby.

c. Canada's Indirect Expropriation Was Not Conducted in Accordance with Due Process and Article 1105 of the NAFTA

812. Article 1110(1)(c) of the NAFTA requires that – in order to be lawful – an expropriation must be conducted in accordance with due process and Article 1105 of the NAFTA.

813. As described in detail above**,** Canada has failed to act in accordance with Article 1105 of the NAFTA. Rather, the measures are manifestly arbitrary, amount to a denial of justice, and violate the Claimants' legitimate expectations. As a result, Article 1110(1)(c) has been breached.

814. Moreover, Canada also failed to accord due process to the Claimants. The Commentary to the OECD Draft Convention on the Protection of Foreign Property (1967) explains what due process encompasses, in the expropriation context:

> "(a) In essence, the contents of the notion of due process of law make it akin to the requirements of the 'Rule of Law', an Anglo-Saxon notion, or of the 'Rechtsstaat', as understood in continental law. Used in an international agreement, the content of this notion is not exhausted by a reference to the national law of the Parties concerned. The 'due process of law' of each of them must correspond to the principles of international law.

1208 *See Eureko B.V. v. Republic of Poland* (UNCITRAL), Partial Award (19 August 2005), para. 242, **CL-000103**; *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 August 2016), para. 397, **CL-000104**; *Olin Holdings Limited v. State of Libya*, ICC Case No. 20355/MCP, Final Award (25 May 2018), paras. 173–4, 200–18, **CL-000105**; *UP and C.D Holding Internationale (formerly Le Cheque Dejeuner) v. Hungary*, ICSID Case No. ARB/13/35, Award (9 October 2018), para. 417, **CL-000106**.

1209 *LETCO v. Liberia*, Award, 31 March 1986, 2 ICSID Reports pp. 343, 366-367, **CL-000107**.

> (b) ... On analysis, this term … implies that whenever a State seizes property, the measures taken must be free from arbitrariness. Safeguards existing in its Constitution or other laws or established by judicial precedent must be fully observed; administrative or judicial machinery used or available must correspond at least to the minimum standard required by international law. Thus, the term contains both substantive and procedural elements."[1210]

815. The need for due process to include a meaningful process by which the State's decision to expropriate can be independently reviewed has been accepted by numerous investment treaty tribunals. For example, the tribunal in *ADC v. Hungary* considered that due process of law requires:

> "Some basic legal mechanisms, such as reasonable advance notice, a fair hearing and an unbiased and impartial adjudicator to assess the actions in dispute, are expected to be readily available and accessible to the investor to make such legal procedure meaningful. In general, the legal procedure must be of a nature to grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard. If no legal procedure of such nature exists at all, the argument that 'the actions are taken under due process of law' rings hollow."[1211]

816. This reasoning was endorsed by the tribunal in *Kardassopoulos and Fuchs v. Georgia*:

> "The Tribunal agrees with the reasoning of the *ADC* tribunal and, in particular, with the proposition that whatever the legal mechanism or procedure put in to place, it 'must be of a nature to grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard' if it is to be found to have been carried out under due process of law. As in *ADC*, the Respondent in the present case failed to ensure that there was a procedure or mechanism in place, either before the taking or thereafter, which allowed Mr. Kardassopoulos, within a reasonable period of time, to have his claims heard."[1212]

817. These basic legal mechanisms were not afforded to the Claimant.

818. As explained in greater detail in above, Canada's Measures were grossly procedurally unfair and violated the fundamental principles due process enshrined in Article 1105 of the NAFTA. As detailed in Me Duchaine's expert report, and as confirmed in the expert report of Rod Northey, Québec fundamentally violated due process by failing to adopt a joint evaluation process for GNLQ, as required under the relevant agreement on environmental evaluation between Québec and the federal government. Moreover, Québec violated due process by abruptly imposing new criteria on the Claimant with regard to the environmental assessment of the GNLQ Project after more than five years into the environmental review

---

1210 *See* Commentary on Article 3, OECD 1967 "Draft Convention on the Protection of Foreign Property", pp. 19-20, para. 5, **CL-00099** (emphasis omitted).

1211 *ADC Affiliate Limited and ADC & ADMC Management Ltd v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), para. 435, **CL-00086**.

1212 *Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award (3 March 2010), para. 396, **CL-000108** (emphasis added)

process — those "core criteria" had never before been articulated, and were the basis for the Project's rejection.

819. As noted by Me Duchaine, the Directive issued by the MELCC in December 2015 confirmed the four corners of the scope of the environmental assessment, and it was fundamentally contrary to law to introduce criteria at this stage. In any event, Québec violated due process by ignoring the evidence submitted by GNLQ regarding the global impact of the project on GHG emissions, as well as the supportive conclusions of its own climate experts.

820. Moreover, Québec violated due process by declaring the parallel Gazoduq Project "dead" as of 21 July 2021 (the same day Québec announced the refusal to authorise the GNLQ Project), and by declaring that there would be no BAPE public consultations process regarding the Gazoduq Project long before its environmental assessment had reached that stage.

821. For its part, Canada violated due process in announcing as a matter of policy in September 2021 that it would never approve the GNLQ project through a tweet of 14 September 2021,[1213] cynically prejudging and pre-empting the outcome of the federal environmental review, which was reduced to a *fait accompli*.

822. In none of those steps was GNLQ given a meaningful opportunity or a chance to respond and defend its interests in a manner consistent with basic standards of due process.

823. These actions clearly fail to meet the standard required in Article 1110(1)(c) of due process and fair and equitable treatment. On this basis alone, the expropriation is unlawful and gives rise to an obligation to provide reparation for the financially assessable damage caused.

d. Canada Has Not Paid Any Compensation to the Claimants for Its Indirect Expropriation

824. Finally, the fact that Canada has not paid any compensation to the Claimant is sufficient in and of itself to render the expropriation unlawful. An expropriation may only be lawful under Article 1110 if it is accompanied by payment of compensation in accordance with the principles set out in Articles 1110(2) to (6) of the NAFTA. This is true even if the expropriation is for a public purpose, not discriminatory and completed in accordance with due process.[1214] Compensation must be equivalent to the fair market value of the expropriated investment as of the date of the expropriation, and shall be made without delay and be fully realizable.

825. There is no dispute that Canada has not paid any compensation to the Claimant, let alone fair market value compensation, in violation of Article 1110(1)(d) of the NAFTA. Therefore,

---

1213 @AShields_Devoir, Twitter account of Alexandre Shields (journalist at Le Devoir), tweet dated 14 September 2021, **Exh. C-36**.

1214 NAFTA, Art. 1110(1); *S.D. Myers, Inc. v. Government of Canada* (UNCITRAL) Partial Award (13 November 2000), para. 308, **CL-0007**.

the expropriation is clearly *prima facie* unlawful under the scope of Article 1110(1)(d), as discussed further in the following section.

826. For these reasons, the Claimant submits that Canada has unlawfully expropriated the Claimant's investments, in breach of Article 1110 of the NAFTA.

V. RELIEF REQUESTED

A. Introduction

827. The Respondent's breaches of international law as pleaded in this Memorial have caused Symbio to incur loss and damage arising out of that breach within the meaning of Article 1117(1) and 1135(2)(b) of the NAFTA. This section addresses the measures sought by the Claimant on behalf of Symbio in order to remedy that loss and damage. In summary, the Claimant claims US$ 1,004,648,000 in damages,[1215] plus interest, declaratory relief and costs for the loss and damage suffered by Symbio as a result of the Respondent's wrongful conduct.

828. The following sections provide an overview of the legal principles governing the Respondent's obligation to provide full reparation and compensation for its breaches of the NAFTA (Parts V.B and V.C); the Claimant's claims for interest (Part V.D), declaratory relief (Part V.E) and costs (Part V.F).

B. Claimant and Symbio are Entitled to Full Reparation for Canada's Violations of the NAFTA

829. As set out above, by adopting the impugned measures the Respondent is in violation of its obligations vis-à-vis Symbio and its investments in Canada under Articles 1102, 1103, 1105 and 1110(1) of the NAFTA.

830. Article 1135(1) and (2) of the NAFTA provides that an arbitral tribunal established under NAFTA Chapter 11 in respect of claims brought pursuant to Article 1117(1) of the NAFTA may award declaratory relief, the restitution of property, monetary damages as well as any applicable interest to the enterprise on whose behalf the claim is being brought, as well as costs in accordance with the applicable arbitration rules.

831. The NAFTA however does not set out specific rules governing the determination of reparation in case of a breach of the NAFTA in the sense of a *lex specialis*. Article 1110 of the NAFTA – like most investment treaties – only establishes the standard of compensation

---

1215 As explained below Secretariat, the Claimant's Quantum Expert, has quantified the amount of the loss and damage suffered by Symbio as of the date of the award (taking 30 September 2023 as a proxy date), taking as a basis the Fair Market Value (**FMV**) of Symbio's investments the GNLQ and Gazoduq Projects. Secretariat has valued the Project's FMV using a Discounted Cash Flow valuation method. That method calculates the Project's free cash flows during the lifetime of the Project; subtracts the Project's projected operating costs, as well as any applicable taxes, changes in net working capital and capital expenditures from the projected revenues; and applies a discount rate (in this case, the Weighted Average Cost of Capital, which represents the rate of return that investors would require from the subject company, based on the time value of money and the risks associated with future cash flows) to reduce the future stream of cash flows to their equivalent value as of the current date (i.e., 30 September 2023). *See* **CER-3,** paras. 4.57, 5.16, 6.84-6.107.

due for lawful expropriations. For the reasons stated below, the Respondent's expropriation of the Claimant's investments was unlawful in violation of Article 1110(1) – and the Claimant's loss should be valued on that basis.

832. In the absence of treaty-specific rules, the applicable standard of reparation is that established under customary international law. It is unanimously accepted that the customary rule governing the reparation of wrongful acts is reflected in the judgment of the Permanent Court of International Justice (**PCIJ**) in the *Factory at Chorzów* case, which dealt with a wrongful liquidation of German subjects' assets:

> "The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[1216]

833. In order to "wipe out all the consequences of the illegal act" and re-establish the situation that would have existed but for the wrongful act, reparation for an internationally wrongful act must be *full*. In the case concerning *Armed Activities in the Territory of the Congo*, the International Court of Justice (**ICJ**) held that the violation of an international obligation entails "an obligation to make full reparation for the damage caused by an internationally wrongful act.[1217]

834. The *Factory at Chorzów* standard is also reflected in the ILC Articles on Responsibility of States for Internationally Wrongful Acts (**ILC Articles** or **ARSIWA**), which are generally accepted as reflecting customary international law. Article 31 states:

> "1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
>
> 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."[1218]

835. Article 34 of the ILC Articles states:

1216 *See Case Concerning the Factory at Chorzów (Claim for Indemnity) (Merits)*, Judgment No. 13, PCIJ (1928) Ser A, No.17, p. 47, **CL-000109.** In the NAFTA context, see *Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award (21 November 2007), para. 275, **CL-00033** ("A breach by a state party to an investment treaty is 'an internationally wrongful act' that triggers the obligation to make 'full reparation' for the injury caused. These rules are applicable under customary international law as well.")

1217 *Armed Activities in the Territory of the Congo (DRC v. Uganda), Reparations, Judgment, I.C.J. Reports 2022*, p. 50, para. 100 (emphasis added), **CL-000110.**

1218 ILC, "Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries" (2001) in *Yearbook of the ILC*, Vol. II, Part Two, P. 91, Article 31(1) (emphasis added), **CL-000111** (hereinafter "**ILC Articles**").

> "Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter."[1219]

836. Article 36 of the ILC Articles states:

> "1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
>
> 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established."[1220]

837. In the present case, the restitution of the investments is no longer materially possible.[1221] The economic value of the Claimant's investment consisted in capital expenses, money, intangible assets and resources that were intrinsically linked to the development of the Projects, as well as the economic profits that Symbio reasonably expected, but for Canada's wrongful actions. As a result of the Respondent's actions and inactions, Symbio was permanently deprived of the entire economic value of its investments in the GNLQ and Gazoduq Projects, and of any reasonably-to-be-expected economic benefit it could derive from its investments. The value of said investments has been irretrievably lost. The Respondent is therefore under an obligation to compensate for the damage caused thereby. The following sections lay down the legal principles and factual evidence in that regard.

C. Claimant and Symbio are Entitled to Compensation for the Injury Caused by the Respondent's Wrongful Conduct

838. Symbio is entitled to compensation for the injury caused by the Respondent's wrongful Symbio is entitled to compensation for the injury caused by the Respondent's wrongful conduct. The following sections begin with an overview of the legal principles relevant to compensation under the standard of full reparation set out in customary international law (Section V.C.1). The Respondent's measures have caused loss and damage to Symbio (Section V.C.2). The valuation of said injury must be based on the fair market value (FMV) of the GNLQ and Gazoduq Projects (Section V.C.3), which as a whole represents the economic value of Symbio. The appropriate valuation date is the date of the award, so as to reflect the subsequent increase in the FMV of the two Projects from which Symbio would have benefitted, but for the Respondent's wrongful conduct (Section V.C.5). In so doing, the tribunal must determine the FMV of the investments in a hypothetical context without

---

1219 *Id.*., p. 95, Article 34 ("Forms of reparation").

1220 *Id.*., p. 96, Article 36 ("Compensation")

1221 *Id.*., p. 96, Article 35 ("Restitution"). As noted by the ILC: "there are often situations where restitution is not available or where its value to the injured State is so reduced that other forms of reparation take priority . . . quite apart from valid election by the injured State or other entity, the possibility of restitution may be practically excluded, e.g. because the property in question has been destroyed or fundamentally changed in character or the situation cannot be restored to the status quo ante for some reason . . . Under article 35, subparagraph (a), restitution is not required if it is 'materially impossible'. This would apply where property to be restored has been permanently lost or destroyed, or has deteriorated to such an extent as to be valueless." (Emphases added.) *Id*., p. 97, Article 35, commentary (4) and p. 98, commentary (8).

taking into account the Respondent's wrongful actions, otherwise this would contradict the principle that a wrongdoer State must not benefit from its own wrongdoing (Section V.C.4). Such compensation must be paid in United States Dollars (US$) (Section V.C.6) and immediately upon the rendering of the final award (Section V.C.7). The Claimant's valuation expert valuates the "but for" FMV of the GNLQ and Gazoduq Projects as of 30 September 2023 to be at US$ 1,004,648,000 (Section V.C.8).

839. As set out in **Section V.D**, the Claimant also requests the Tribunal to hold that the Respondent is liable to pay compound interest on the amount of damages thus awarded, starting from the date of the Award and until the date of payment, at a rate of 5% compounded annually.

1. Overview of Legal Principles Relevant to Determination of Compensation

840. The NAFTA does not establish a *lex specialis* standard for the determination of compensation due for unlawful expropriations or other breaches of the treaty. It is silent on those matters. Article 1131(1) of the NAFTA however provides that Chapter Eleven Tribunals "shall decide the issues in dispute in accordance with [the NAFTA] and applicable rules of international law." In such circumstances, NAFTA tribunals are required to apply the default standard for the assessment of damages established under customary international law.[1222]

841. As noted by the PCIJ in *Factory at Chorzów*:

> "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself."[1223]

842. Similarly, the arbitral tribunal in *ADC v. Hungary* held that:

> "The BIT only stipulates the standard of compensation that is payable in the case of a lawful expropriation, and these cannot be used to determine the issue of damages payable in the case of an unlawful expropriation since this would be to conflate compensation for a lawful expropriation with damages for an unlawful expropriation. … Since the BIT does not contain any lex specialis rules that govern the issue of the standard for assessing damages in the case of an unlawful

---

1222 *See Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States,* ICSID Case No. ARB(AF)/04/5, Award (21 November 2007), para. 275-278, **CL-00033 (**after holding the customary standard of full reparation as applicable in the context of NAFTA violations, the tribunal added: "the three States party to the NAFTA confirmed under Article 1135 of the NAFTA the principle of compensation upon a violation of the rights granted to a national of another Party")

1223 *See Factory at Chorzów (Claim for Indemnity) (Jurisdiction)*, Judgment No. 8, PCIJ (1927) Ser A, No.9, p. 21**, CL-000113.** *See also* James Crawford, *The International Law Commission's Articles on State Responsibility* (CUP 2002), p. 218, **CL-000114 (**"It is … well established that an international court or tribunal which has jurisdiction with respect to a claim of State responsibility has, as an aspect of that jurisdiction, the power to award compensation for damage suffered.").

> expropriation, the Tribunal is required to apply the default standard contained in customary international law in the present case."[1224]

843. As noted above, the PCIJ set out the standard for the assessment of damages under customary law in *Factory at Chorzów* as follows: a State that commits an internationally wrongful act must provide "full reparation" so as to "wipe out all the consequences" of the State's wrongful act.[1225] The measure of full compensation must be such as to "re-establish the situation which would, in all probability, have existed if that act had not been committed.[1226] This entails the

> "payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it.[1227]

844. The implications of this standard with respect to the valuation of the injury and the relevant date of valuation are set out in below.

845. The *Factory at Chorzów* standard has been consistently affirmed by arbitral tribunals. For example, the tribunal in *ADC Affiliate v. Hungary* held that the customary international law standard for the assessment of damages resulting from an unlawful act is as set out in *Chorzów Factory*,[1228] commenting that "there can be no doubt about the present vitality of the *Chorzów Factory* principle, its full current vigor having been repeatedly attested to by the International Court of Justice".[1229] Similarly, the *S.D. Myers* tribunal affirmed that the *Chorzów Factory* standard on compensation applies in the NAFTA context:

> "There being no relevant provisions of the NAFTA other than those contained in Article 1110 the Tribunal turns for guidance to international law. The principle of international law stated in the *Chorzow Factory (Indemnity)* case is still recognised as authoritative on the matter of general principle".[1230]

1224 *See ADC Affiliate Ltd & ADC & ADMC Management Ltd v. Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), paras. 481 and 483, **CL-00086.** *See also Factory at Chorzów (Claim for Indemnity) (Merits)*, Judgment No. 13, PCIJ (1928) Ser A, No.17, p. 47**, CL-000109** ("the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the day of payment. . . . Such a consequence would not only be unjust, but also and above all incompatible with the aim of Article 6 and following articles of the Convention . . . since it would be tantamount to rendering lawful liquidation and unlawful dispossession indistinguishable in so far as their financial results are concerned.")

1225 *See Factory at Chorzów (Claim for Indemnity) (Merits)*, Judgment No. 13, PCIJ (1928) Ser A, No.17, p. 47**, CL-000109.**

1226 *Id.*

1227 *Id.*

1228 *See ADC Affiliate Ltd & ADC & ADMC Management Ltd v. Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), paras. 484-494, **CL-00086.**

1229 *Id.*, para. 493.

1230 *S.D. Myers, Inc. v. Government of Canada* (UNCITRAL), Partial Award (13 November 2000), paras. 310-311**, CL-0007.**

846. Even though the *Factory at Chorzów* was a case of unlawful expropriation, international arbitral tribunals have applied the same standard in circumstances where the State had violated expropriatory and non-expropriatory standards through the same actions or measures,[1231] or where the State had also committed violations of customary law.[1232]

847. The same applies in the NAFTA context. When a NAFTA Party violates more than one obligation under the NAFTA through the same measure or a series of measures, the principle of full reparation requires that compensation be paid in respect of the damage caused by *all* breaches—subject to the rule against double recovery of damages.[1233] Thus, in the case of *Metalclad v. Mexico*, where the respondent had breached both Article 1105(1) and 1110 of the NAFTA, the tribunal held that the damages

> "would be the same since both situations involve[d] the complete frustration of the operation of the landfill and negate[d] the possibility of any meaningful return on Metalclad's investment. In other words, Metalclad ha[d] completely lost its investment."[1234]

848. In *S.D. Myers v. Canada*, the tribunal added that where several provisions of the NAFTA have been breached, the rights and remedies under the treaty are "cumulative":

> "The fact that a host Party has breached both Articles [of the NAFTA] cannot be taken to mean that the investor is entitled to less compensation than if only [one article] were breached. A host Party does not reduce the extent of its liability by breaching more than one provision of the NAFTA."[1235]

1231 *See, e.g., Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2007), paras. 349-352, **CL-000115** (re: unlawful expropriation, fair and equitable treatment, full protection and security, and arbitrary measures); *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. (Vivendi I) v. Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 August 2007), paras. 8.2.1-8.2.11, **CL-00063** (re: unlawful expropriation, and breach of the fair and equitable treatment standard); *Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award (3 March 2010), paras. 501-505, 517, 532-534 and 537, **CL-000108** (re: unlawful expropriation, and fair and equitable treatment); *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Award (12 May 2005), paras. 399-402 and 409-410, **CL-00068** (re: fair and equitable treatment, and an umbrella clause); and *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB (AF)/11/2, Award (4 April 2016), paras. 841-853, **CL-000119** (re: unlawful expropriation, and fair and equitable treatment).

1232 In the *Chorzów Factory* judgment the PCIJ referred to reparation for a "breach of an engagement". Meanwhile, the ILC Articles require full reparation for injury caused by an "internationally wrongful act" (Article 31(1)), which is defined by Article 2 as an act attributable to a State and which "constitutes a breach of an international obligation of the State" (ILC Articles on the Responsibility of States, **CL-000111**). Judge Crawford observed that the term "breach of an international obligation … is used to cover both treaty and non-treaty obligations" and has "essentially the same meaning" as that used in *Chorzów Factory*. See James Crawford, *The International Law Commission's Articles on State Responsibility* (CUP 2002), p. 83, para. 7, **CL-000114**.

1233 *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, 13 November 2000, para. 316, **CL-0007** ("damages for breach of any one NAFTA provision can take into account any damages already awarded under a breach of another NAFTA provision; there must be no 'double recovery'.")

1234 *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 113, **CL-00059**.

1235 *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, 13 November 2000, para. 318, **CL-0007**.

849. The *Factory at Chorzów* standard is also reflected in the ILC Articles on State Responsibility. According to Article 36 of the ARSIWA:

> "1. A State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
>
> 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established."[1236]

850. In other words, under customary international law a State which has violated its obligations must pay compensation for any damage caused by the wrongful act, so long as it can be measured financially,[1237] which includes lost profits, so far as this is established in the given case. This proposition has been widely affirmed by international courts[1238] and arbitral tribunals[1239] as reflecting customary international law.

851. The same proposition has been affirmed in the NAFTA context. Thus, in ADM v. Mexico the tribunal referred to Article 36 of ARSIWA and held that "compensation encompasses both the loss suffered (*damnum emergens*) and the loss of profits (*lucrum cessans*). Any direct damage is to be compensated." In addition, "the second paragraph of Article 36 recognizes that in certain cases compensation for loss of profits may be appropriate."[1240] On the latter point, the tribunal held that that "lost profits are allowable insofar as the Claimants prove that the alleged damage is not speculative or uncertain - i.e., that the profits anticipated were probable or reasonably anticipated and not merely possible." Referring to Judge Crawford's commentary, the tribunal noted that:

> "lost profits have been awarded where the claimants prove that 'an anticipated income stream has attained sufficient attributes to be considered a legally protected interest of sufficient certainty to be compensable. This has normally

---

1236 ILC Articles on the Responsibility of States, p. 98, Article 36 ("Compensation"), **CL-000111**.

1237 *Id.,* p. 99, commentary (5). According to the ILC, the scope of this obligation is delimited by the phrase "any financially assessable damage", that is, "any damage which is capable of being evaluated in financial terms."

1238 *See., e.g. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 233, para. 460, **CL-000116** with further references in the Court's jurisprudence ("[i]t is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.")

1239 *See., e.g. Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2007), para. 350, **CL-000115** ("The Draft Articles are currently considered to reflect most accurately customary international law on State responsibility.") *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, SCC Case No. 064/2008, Award (8 June 2010), paras. 42-43 and 65, **CL-000117** ("the ILC Articles are widely viewed as the most authoritative statement of the law in this area that exists today."); *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award (31 August 2018), paras. 10.96-10.97, **CL-000118;** *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), paras. 846-849, **CL-000119;** *Gemplus, S.A., SLP, S.A., and Gemplus Industrial S.A. de C.V. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award (16 June 2010), para. 13.80-13.81, **CL-000120.**

1240 *Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States,* ICSID Case No. ARB(AF)/04/5, Award (21 November 2007), para. 281, **CL-00033.**

> been achieved by virtue of contractual arrangements or, in some cases, a well-established history of dealings'".[1241]

852. In conclusion, according to the customary rules governing compensation for violations of the NAFTA, Symbio is entitled to compensation for the damage caused by the Respondent's conduct. Compensation must be such as to restore the situation which would, in all probability have existed in the date of the award, but for the Respondent's wrongful conduct. Compensation should cover not only the financially assessable damage already suffered, but also future profits that were lost as a result of such wrongful acts, so long as they can be established with a reasonable degree of certainty and were probable or reasonably anticipated.

2. The Respondent has Caused Loss and Damage to Symbio and its Investments

853. A NAFTA tribunal may award compensation only when an injury is caused by the internationally wrongful act of a State. According to Article 1117(1)(b) of the NAFTA, an investor of a Party may act on behalf of an enterprise of another party, where said enterprise has "has incurred loss or damage by reason of, or arising out of, that breach." The ordinary meaning of the terms "by reason of, or arising out of" in this provision requires the demonstration of a causal nexus between the alleged breach and the claimed loss or damage.

854. Similarly, Article 31 of ARSIWA provides that the responsible State is under an obligation to make full reparation for the injury "caused by the internationally wrongful act." According to the ILC:

> "This phrase is used to make clear that the subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act."[1242]

855. In the circumstances of the present case, the economic damage suffered by Symbio was the direct, foreseeable and intended consequence of the Respondent's wrongful conduct. The destruction of the Claimant's investments would not have occurred, "but for" the Respondent's wrongful conduct.[1243] The Respondent's wrongful conduct consists in the arbitrary, discriminatory and unfair refusal by the Québec Government of the GNLQ Project, and its simultaneous decision that the Gazoduq Project "died" together with GNLQ. Leaving aside the procedural irregularities which preceded, this decision was ostensibly based on

---

1241 *Id.*, para. 285, **CL-00033,** citing James Crawford, THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY (Cambridge University Press, 2002) p. 228, **CL-000114**.

1242 ILC Articles on the Responsibility of States, Article 31, commentary (10), **CL-000111.**

1243 According to the ILC Articles, Commentary (10) to Article 31, **CL-000111**, "causality in fact is a necessary but not a sufficient condition of reparation. […] The notion of a sufficient causal link which is not too remote is embodied in the general requirement in Article 31 that the injury should be in consequence of the wrongful act, but without the addition of any particular qualifying phrase." Similarly, Ripinsky and Williams posit that "the issue is whether the wrongful conduct played *some* part in bringing about the harm or injury or was irrelevant to its occurrence." S. Ripinsky, "Damages in International Investment Law", (London, British Institute of International and Comparative Law: 2008), p. 135. Like any other fact, this need only be established on a balance of probabilities.

environmental criteria that had never been applied before—nor have they been applied ever since—to project proponents operating in like circumstances; that were imposed at the last minute in a procedurally grossly unjust manner, and were motivated by political considerations unrelated to the environmental aims they professed to address; that disregarded the scientific conclusions of the MELCC's own climate change experts; and frustrated the legitimate expectations that the Respondent itself had fostered in Symbio through repeated specific assurances and representations made over the course of the Projects. The Decision Statement of the Federal Government to reject the GNLQ Project on 7 February 2022 merely confirmed what was essentially a *fait accompli.*

856. Taken together, the decisions of the Provincial and Federal Governments were the root cause of the economic destruction of GNLQ and Gazoduq, and ultimately Symbio. By refusing the environmental approval of the Projects, the Québec and Federal Government of Canada knowingly destroyed the economic value of the Projects, and any reasonably-to-be-expected economic benefit Symbio could derive therefrom.

857. At this point, it is important to stress that the Claimant does not generally contest Canada's sovereign right to adopt laws and regulations which are appropriate to the protection of the environment. Indeed, NAFTA Article 1114(1) expressly recognizes the NAFTA Parties' right to adopt, maintain or enforce "any measure . . . it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns."

858. What Canada cannot do is apply purported environmental criteria in violation of its obligations under NAFTA Chapter. Article 1114(1) of the NAFTA makes clear that environmental measures must be "otherwise consistent with" the obligations set out in Chapter 11, including Articles 1102, 1103, 1105 and 1110. Thus, the mere invocation of alleged environmental concerns is not enough to shield a governmental decision from review to determine whether that decision, the underlying decision-making process, and its ultimate impact and effects are consistent with NAFTA obligations.

859. Had the Respondent acted in a manner consistent with its NAFTA obligations, it would have respected the legal parameters for the conduct of environmental reviews, including with regard to the scope of such reviews, respect for due process and for each respective government's jurisdiction; applied the reasonable, even-handed criteria it has applied in respect of other projects in Québec and/or Canada operating in like circumstances; in line with the legitimate expectations it had previously fostered; acting on the scientific evidence and the data presented by its own experts and the recommendations of its own technical experts; and in accordance with due process of law. In that case, Symbio would not have suffered any loss or damage: the application of the ordinary criteria to the evidence presented by the proponent and the MELCC's own experts would have led to the conclusion that the GNLQ Project satisfied the criteria set out by the MELCC, enabling the development phase to move forward.

860. As a result of their measures in violation of NAFTA Chapter Eleven obligations, both the Province and the Federal Government caused severe economic harm to the Symbio's investments, which was radically deprived of the economic value of its financial

contributions and of any reasonably-to-be-expected economic profit. By suddenly moving the goalposts at the eleventh hour, the Québec Government saw to it that the GNLQ and Gazoduq Projects would "never see the light of day".[1244] Similarly, the Federal Government merely copied the Québec Government's refusal, and before even rendering its decision it made clear that the Project "would not see the light of day".

861. It follows that the total economic destruction of the GNLQ and Gazoduq Projects was the immediate, direct and foreseeable consequence of conduct for which the Respondent is responsible under the NAFTA. There was no intervening cause between the decisions of the Québec and Federal Governments and the economic injury suffered. The two Projects "died" together[1245] — as Minister Charette put it — precisely *because* of those decisions, which were measures in violation of NAFTA. As the tribunal in *Lemire v. Ukraine* put it, there is "an uninterrupted and proximate logical chain leads from the initial cause (in our case the wrongful acts of Ukraine) to the final effect (the loss in value of [the investment])".[1246]

862. Additionally, the destruction of the economic value of the Projects was the necessary and foreseeable consequence of the unlawful measures for which the Respondent is responsible under the NAFTA. The Provincial and Federal Government knew that the environmental approval of the Project was a *conditio sine qua non* for the development of the Projects. By "killing" the Projects on fundamentally arbitrary and discriminatory grounds, that were imposed at the very last minute of a multi-year environmental review process against the legitimate expectations the Government itself had fostered, the Respondent knowingly and willingly caused the economic damage suffered by Symbio.

863. Thus, there is a direct and certain causal nexus between the Respondent's measures and the economic injury suffered by Symbio as a result of the substantial deprivation of the economic value of its investments and of any reasonably-to-be-expected economic benefit.

3. The Valuation of the Injury Caused by the Respondent Must be Based on the Fair Market Value of the GNLQ and Gazoduq Projects

864. In the investment treaty context, the *Factory at Chorzów* standard means that the investor must be put in the position it would have been in if the investment had been made but the unlawful acts of the State had not occurred. Since the Claimant's investments were collectively destroyed by reason of the Respondent's cumulative violations of Articles 1102, 1103, 1105 and 1110(1) of the NAFTA, that standard entails an assessment by reference to the investments' fair market value (**FMV**), *i.e.* the same valuation basis as that which applies to an expropriation claim.

1244 Transcript of press conference dated 22 July 2021 prepared by TACT Conseil **Exh. C-0284,** pp. 1, 6.

1245 Radio-Canada, « Rejet de GNL Québec: il n'y aura pas de BAPE sur le projet de Gazoduq », 21 July 2021, **Exh. C-35.**

1246 *Joseph Charles Lemire v. Ukraine II*, ICSID Case No. ARB/06/18, Award, 28 March 2011, para. 157, **CL-000121.**

865. Article 1110(2) of the NAFTA provides that in case of a lawful expropriation, compensation "shall be equivalent to the fair market value of the expropriated investment". It further elaborates that "[v]aluation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value".

866. Whilst Article 1110(2) applies specifically in the context of lawful expropriations, the measure of the FMV of an investment may also be used for the determination of the value lost as a result of an unlawful expropriation. Thus, in Vivendi v. Argentina the tribunal found that the respondent had adopted unlawful measures of expropriation in conjunction with a breach of the FET and FPS standards. Given that the host State had rendered the investments "valueless" causing "long-term losses", it was appropriate to assess compensation based on the FMV of the investment.[1247] The tribunal noted that:

> "Based on these principles, and absent limiting terms in the relevant treaty, it is generally accepted today that, regardless of the type of investment, and regardless of the nature of the illegitimate measure, the level of damages awarded in international investment arbitration is supposed to be sufficient to compensate the affected party fully and to eliminate the consequences of the state's action.
>
> Of course, the level of damages necessary to compensate for a breach of the fair and equitable treatment standard could be different from a case where the same government expropriates the foreign investment. *The difference will generally turn on whether the investment has merely been impaired or destroyed. Here, however, we are not faced with a need to so differentiate, given our earlier finding that the same state measures infringed both relevant Articles of the BIT and that these measures emasculated the Concession Agreement, rendering it valueless*. Put differently, the breaches of Articles 3 and 5 caused more or less equivalent harm."[1248] (Emphasis added.)

867. Other tribunals have also taken the FMV of the investment as the basis for the valuation of the loss, in circumstances where the value of the investment was entirely destroyed through unlawful expropriation[1249] or the cumulative nature of non-expropriatory breaches of the BIT had caused "important long-term losses" to the investment.[1250] For example, in

---

1247 *See, e.g., Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 August 2007), paras 8.2.7-8.2.8, **CL-00063**.

1248 *Id.*

1249 *See, e.g., Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award (3 March 2010), paras. 501-505 and 517, **CL-000108** (following a finding of unlawful expropriation and of breach of the fair and equitable treatment standard, the tribunal agreed with *Vivendi II* and adopted the fair market value standard for both breaches: "The Tribunal therefore finds that the appropriate standard of compensation from which to approach the calculation of the damage sustained by Mr. Kardassopoulos is the FMV of the early oil rights". At paragraph 534, the tribunal commented that the respondent's violations of the Treaty had resulted in the investments being "irretrievably and entirely lost"). *See also Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB (AF)/11/2, Award (4 April 2016), paras. 841-853, **CL-000119** (following a finding of unlawful expropriation and of breach of the fair and equitable treatment standard, the tribunal adopted the fair market value standard for both breaches, commenting that the FET breach had caused the investments "to become worthless").

1250 *See, e.g., CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Award (12 May 2005), para. 410, **CL-00068** (following a finding of violation of the fair and equitable treatment standard and of the umbrella clause,

Crystallex v. Venezuela the tribunal found both an unlawful expropriation and a breach of the FET standard, both of which had caused the investments "to become worthless". The tribunal adopted the fair market value standard for the valuation of the injury caused by both breaches, stating that:

> "it is well-accepted that reparation should reflect the 'fair market value' of the investment. Appraising the investment in accordance with the fair market value methodology indeed ensures that the consequences of the breach are wiped out and that the situation which would, in all probability, have existed if the wrongful acts had not been committed is re-established".[1251]

868. Similarly, in *Windstream v. Canada* the tribunal held that the purpose of compensation to be awarded is to make the injured party "whole" and implied that where a claimant has "lost the entire value of its investment", the compensation to be awarded must reflect that loss, i.e. the full value of that investment.[1252]

869. This is consistent with the ILC commentary to Article 36 of ARSIWA, whereby:

> "The reference point for valuation purposes is the loss suffered by the claimant whose property rights have been infringed. This loss is usually assessed by reference to specific heads of damage relating to (i) compensation for capital value; (ii) compensation for loss of profits; and (iii) incidental expenses. . . . Compensation reflecting the capital value of property taken or destroyed as the result of an internationally wrongful act is generally assessed on the basis of the "fair market value" of the property lost. The method used to assess "fair market value", however, depends on the nature of the asset concerned."[1253]

870. As to the meaning of the term "fair market value", tribunals have frequently adopted the American Society of Appraisers' definition:

> "The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."[1254]

---

the tribunal considered fair market value the appropriate standard where the effect of the breach "results in important long-term losses"); *Azurix v. Argentine Republic*, ICSID Case No. ARB/01/12, Award (14 July 2006), paras. 419-424, **CL-00077** (following a finding of breach of the fair and equitable treatment and full protection and security standard and of arbitrary treatment, the tribunal considered fair market value the appropriate standard particularly because the concession had been taken over).

1251 C*rystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB (AF)/11/2, Award (4 April 2016), para. 850, **CL-000119**.

1252 *Windstream Energy LLC v. Government of Canada*, NAFTA, PCA Case No. 2013-22, Award (27 September 2016), para. 473, **CL-00046.**

1253 ILC Articles on the Responsibility of States, Commentaries (21) and (22) to Article 36, **CL-000111.**

1254 *See* American Society of Appraisers, ASA Business Valuation Standards, ASA website, as cited in *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Award (12 May 2005), para. 402, **CL-00068;** *Azurix Corp.*

871. This definition is consistent with the term "market value" as defined by the International Valuation Standards Committee.[1255]

872. As explained below, the Claimant has instructed its quantum expert to perform a valuation of the FMV of Symbio's investments.

4. Matters to be Disregarded When Assessing Compensation

873. The fact that the FMV value of the investment must be assessed in a hypothetical context means that, in the valuation process, no account is taken of the measures that breach international law and could adversely affect the value of the asset. As noted above, the definition of a FMV presupposes a willing buyer and seller not acting under compulsion or duress. The Commentary to the OECD's 1967 Draft Convention on the Protection of Foreign Property states this principle — albeit in the context of lawful expropriation— in the following terms:

> "As a rule, [the 'genuine value of the property affected'] will correspond to the fair market value of the property without reduction in that value due to the method by which the payment is calculated: to the manner in which it is made; or to any special tax or charges levied on it. Furthermore, the value must remain unaffected by artificial factors such as deterioration due to the prospect of the very seizure which ultimately occurs, similar seizures by the Party concerned or the general conduct of that Party towards property of aliens which makes such seizures likely"[1256]

874. The principle has been followed by the Iran-US Claims Tribunal and by investment treaty tribunals. For example, the tribunal in *Azurix v. Argentina* stated:

> "The Iran-U.S. Claims Tribunal, in one of its awards, decided that 'where the alleged expropriation is carried out by way of a series of interferences in the enjoyment of property', the date of the expropriation is 'the day when the interference has ripened into a more or less irreversible deprivation of the property rather than on the beginning date of the events.' It has been sometimes

---

v. Argentine Republic, ICSID Case No. ARB/01/12, Award (14 July 2006), para. 424, **CL-00077;** *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award (28 September 2007), para. 405, **CL-000122;** and *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB (AF)/11/2, Award (4 April 2016), paras. 851-852, **CL-000119.**

1255 *See* Sergey Ripinsky and Kevin Williams, *Damages in International Investment Law* (BIICL 2008), p. 184, fn 11, **CL-000123**, where the authors observe that the International Valuation Standards Committee definition of "market value" is "along the lines very similar" to the American Society of Appraisers' definition of "fair market value". They quote the International Valuation Standards Committee definition as follows: "Market Value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgably, prudently and without compulsion."

1256 *See* OECD, "1967 Draft Convention on the Protection of Foreign Property: Text with Notes and Commentary", p. 21, para. 8(a) of the commentary on Article 3, **CL-00099**. *See also* the Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens (1961), Article 10(2)(b) (p. 553) and commentary thereon (p. 558), **CL-00070**. ("just compensation in terms of the fair market value of the property or of the use thereof unaffected by this or other takings or by conduct attributable to the State and designed to depress the value of the property in anticipation of the taking") *See also* commentary to Article 10(2)(b) at id., p. 558.

> argued that applying this formula would lead to an inequitable situation where the investment's value would be assessed at the time when the cumulative actions of the State would have led to a dramatic devaluation of the investment. However, such a view does not consider that, *in assessing fair market value, a tribunal would establish that value in a hypothetical context where the State would not have resorted to such manoeuvres but would have fully respected the provisions of the treaty and the contract concerned*."[1257] (Emphasis added)

875. This approach was further considered by the tribunal in *von Pezold v. Zimbabwe*. It assessed compensation (in the event that the expropriated property was not returned as ordered) on a "but for" basis, which it described in the following terms: "The 'but for' value […] is a hypothetical value; it is the value of the Estates which would have existed had the Respondent not acted unlawfully. This approach is conceptually consistent with providing full compensation under the *Chorzów Factory* principle."[1258] Indeed, the *Chorzów Factory* standard requires that a State that commits an internationally wrongful act must make full reparation, which "must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed".[1259]

876. The same principle (which, as noted, follows from *Factory at Chorzów*) applies with respect to breaches of international law other than expropriation: damages due to an investor by reason of a State's unlawful conduct should not be reduced on account of unlawful conduct. The same is equally the case with respect to lawful expropriations.

877. It must also be noted that in assessing fair market value, the valuation is also to be based on the principle of the highest and best use. As Borzu Sabahi puts it, "[f]air market value is not a measure of the value of the asset *as it has been used*, but it should be a measure of the value of the asset if the asset *is put to the most valuable use it can be put to*".[1260] This principle was applied for example in the case of *Santa Elena. v. Costa Rica*.[1261]

878. The effect of this rule in the present proceedings is that the valuation of the FMV of the investments must proceed on the assumption that:

1257 *See Azurix v. Argentine Republic*, ICSID Case No. ARB/01/12, Award (14 July 2006), para. 417, **CL-00077**.

1258 *See Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), paras. 766 and 802, **CL-00097**.

1259 *See Case Concerning the Factory at Chorzów (Claim for Indemnity) (Merits)*, Judgment No. 13, PCIJ (1928) Ser A, No.17, p. 47, **CL-000109**.

1260 *See* Borzu Sabahi, *Compensation and Restitution in Investor-State Arbitration: Principles and Practice* (OUP 2011), p. 108, **CL-000124**.

1261 *See Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award (17 February 2000), paras. 70 and 94, ("the compensation to be paid should be based upon the fair market value of the Property calculated by reference to its 'highest and best use'." **CL-000125**. *See also* Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law* (2nd edn, OUP 2017), para. 4.41, **CL-00093**.

a. the Claimant's investments were not subjected to unfair and inequitable treatment by the Québec and Federal Governments starting from the deliberate targeting of the Claiamant and the deliberate leak to the press of confidential information aimed at harming Symbio's reputation;

b. the environmental review process for both Project was consistent with the Respondent's obligations under the NAFTA, and that both levels of Government exercised their discretion in a non-discriminatory, procedurally fair and reasonable manner and consistently with the Claimant's legitimate expectations;

c. the Projects were assessed on the basis of the non-discriminatory environmental criteria which the Québec and Federal Government typically apply to project proponents in like circumstances.

879. Accordingly, regardless of the valuation date to be chosen (an issue addressed in the following section) the Claimant submits that valuation must disregard such matters as to ensure that the Respondent does not benefit from its own unlawful conduct. Indeed, the "but for" approach is essentially an application of the general principle of international law that a State may not profit from its own wrongdoing.[1262]

5. The Valuation Date for Unlawful Expropriation and Non-Expropriatory Breaches, and the Claimant's Election Thereon

880. Under customary international law, the Claimant is entitled not just to the value of the investments as of the date of the breach, but also to any greater value that property has gained up to the date of the award. As stated the PCIJ stated in *Factory at Chorzów*,

> "the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the day of payment. . . . Such a consequence would not only be unjust, but also and above all incompatible with the aim of Article 6 and following articles of the Convention . . . since it would be tantamount to rendering lawful liquidation and unlawful dispossession indistinguishable in so far as their financial results are concerned."[1263]

881. Therefore, in circumstances where the expropriation is unlawful, the claimant can elect between the following valuation dates **(i)** the value of the expropriated property as it was on the date immediately before the expropriation, or the date that the impending expropriation became publicly known, whichever is earlier; or **(ii)** a current date valuation. The latter

---

1262 As to which, *see* Charles Kotuby and Luke Sobota, *General Principles of Law and International Due Process* (OUP 2017), pp. 138-139, **CL-000128;** and *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA and Ors*, 6- I.US.C.T.R.219, Award No. 141-7-2 (June 1984), p. 5, **CL-000129.** It is a well recognized principle in many municipal systems and in international law that no one should be allowed to reap advantages from their own wrong …").

1263 *Factory at Chorzów (Claim for Indemnity) (Merits), Judgment No. 13*, PCIJ (1928) Ser A, No. 17, p. 47, **CL-000109**.

applies, in particular, where the value of the asset has considerably *increased* following the commission of the wrongful act.[1264]

882. Arbitral tribunals have applied this principle in the context of unlawful expropriations. For example, in *ADC v. Hungary* the tribunal noted that the value of the investment had "risen very considerably" after the date of expropriation, and that "the application of the *Chorzów Factory* standard requires that the date of valuation should be the date of the Award and not the date of expropriation, since this is what is necessary to put the Claimants in the same position as if the expropriation had not been committed."[1265] In *Siemens v. Argentina*, the tribunal observed that "[u]nder customary international law, Siemens [wa]s entitled not just to the value of its enterprise as of May 18, 2001, the date of expropriation, but also to any greater value that enterprise has gained up to the date of this Award, plus any consequential damages"; for the tribunal, it was "only logical that, if all the consequences of the illegal act need to be wiped out, the value of the investment at the time of this Award be compensated in full. Otherwise compensation would not cover all the consequences of the illegal act."[1266] In *von Pezold and others v. Zimbabwe*, the tribunal agreed with the *ADC v. Hungary* tribunal as the "correct approach", and noted that valuation at the date of the expropriation (or just before) "is not always appropriation".[1267] For the tribunal, since "compensation is an alternative remedy to restitution . . . the sum of compensation should be the financial equivalent to that which would have been returned to the Claimants" and that "compensation should be calculated at the time of the Award, rather than at the time of the unlawful acts."[1268]

883. The same logic is equally applicable for those other breaches based on the same wrongful conduct as forms the basis of the unlawful expropriation claim, or otherwise involve a destruction of the investment. As noted in *Vivendi II*, the *Chorzów Factory* standard

---

[1264] The same position has been accepted by other ad hoc or international courts and tribunals and highly qualified publicists. *See, for example, Texaco Overseas Petroleum Company v. Government of the Libyan Arab Republic* (Ad Hoc), Award (19 January 1977) available on *Jus Mundi*, para. 102, **CL-000142,** quoting from Jimenez de Arechaga in Max Sørensen (ed), MANUAL OF PUBLIC INTERNATIONAL LAW (1968, Carnegie Endorment for International Peace) p. 564 *et seq*. (« Le fait que l'indemnité présuppose, comme l'a déclaré la Cour permanente de justice internationale, "le paiement d'une somme correspondant la valeur qu'aurait la restitution en nature" a des effets importants quant à, sa mesure. A la suite de la dépréciation monétaire et des retards impliqués par l'administration de la justice, la valeur des biens confisqués peut être plus élevée au moment où la décision judiciaire est rendue qu'au moment où l'acte illicite a été commis. Etant donné que la compensation en monnaie doit, dans toute la mesure du possible, être équivalente à la « restitutio », le critère à retenir est celui de la valeur à la date à laquelle l'indemnité est payée ».) *See further*, ECtHR, *Papamichalopoulos and others v. Greece*, Application No. 14556/89, Judgment (Article 50) (31 October 1995), paras. 37-39, **CL-000126** (in a case of unlawful expropriation, the European Court of Human Rights noted that "the compensation to be awarded to the applicants is not limited to the value of their properties at the date on which the Navy occupied them" as "the land and its immediate vicinity" had "undergone development in the form of buildings which serve as a leisure centre" and on that basis determined compensation based on "the current value of the land, increased by the appreciation brought about by the existence of the buildings, and the construction costs of the latter.")

[1265] *ADC Affiliate Ltd & ADC & ADMC Management Ltd v. Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), paras. 495-499, **CL-00086**.

[1266] *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8 (Award 6 February 2007), paras. 352-353, **CL-000115**

[1267] *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), paras. 761-664, **CL-00097**

[1268] *Id.*, paras. 761-664.

"permits, if the facts so require, a higher rate of recovery than that prescribed in [the lawful expropriation provision of the BIT]", as "it is generally accepted today that, regardless of the type of investment, and regardless of the nature of the illegitimate measure, the level of damages awarded in international investment arbitration is supposed to be sufficient to compensate the affected party fully and to eliminate the consequences of the state's action.[1269]

884. This position is entirely in line with the position taken by the PCIJ in the *Factory at Chorzów*. Following the enunciation of the principles relevant to reparation, the PCIJ directed the Court-appointed experts to determine the value of the undertaking *both* on the date of the dispossession "in the state in which that undertaking (including the lands, buildings, equipment, stocks and processes at its disposal, supply and delivery contracts, goodwill and future prospects) was" at that time,[1270] ***and*** to determine:

> "the value at the date of the present judgment, expressed in Reichsmarks current at the present time, of the same undertaking (Chorzów) if that undertaking (including lands, buildings, equipment, stocks, available processes, supply and delivery contracts, goodwill and future prospects) had remained in the hands of the [injured companies], and had either remained substantially as it was in 1922 or had been developed proportionately on lines similar to those applied in the case of other undertakings of the same kind, controlled by the Bayerische, for instance".[1271]

885. In this juncture, it is essential to note that the PCIJ directed the experts to determine the market value of the factory at the time of the judgment even though the factory itself had not yet been completed and was not operational at the time. The Court said:

> "The fact that the chemical factory was not only not working, but not even completed, at the time of transfer of the territory to Poland, can be of no importance; for chemical industry of all kinds was expressly mentioned in the articles of the Oberschlesische Company as one of the objects of that Company's activities, and the sections and plant of the chemical factory, which were, moreover, closely connected with the sections and plant producing nitrate of lime, had already been provided for and mentioned in the contract for construction and exploitation of March 5th, 1915 ; thus, the entry into working of the factory was only the normal and duly foreseen development of the industrial activity which the Oberschlesische had the right to exercise in Polish Upper Silesia."[1272]

886. It follows that, in circumstances where a State has committed a wrongful act or a series of wrongful acts which have completely deprived the investor of the economic value of the

---

1269 Cf. *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (Vivendi II)*, ICSID Case No. ARB/97/3, Award (20 August 2007), paras. 8.2.5 and 8.2.7, **CL-00063**.

1270 *Case Concerning the Factory at Chorzów (Claim for Indemnity) (Merits)*, Judgment No. 13, PCIJ (1928) Ser A, No.17, p. 51, Question I.A, **CL-000109**.

1271 *Id.*, pp. 51-52, Question II.

1272 *Id.*, p. 54.

investment, the customary standard of reparation enunciated in *Factory at Chorzów* requires the payment of "full compensation" on the basis of the FMV of the investment. Where the value of the investment would have increased following the perpetration of the wrongful act, customary law requires the determination of the FMV of said investment at the date of the award, so as to restore the investor in the position that it would have been, had the wrongful act not taken place.

887. On the facts of this case, the FMV of Symbio's investments would have continued to increase "but for" the Respondent's wrongful actions due to a combination of factors:

a. *First*, the granting of the environmental approvals was an important step in Symbio's multi-year efforts to develop the Project and reach the stage of Final Investment Decision (**FID**), but only one among many key milestones the Project already had reached by 2021. As explained in greater detail in the Secretariat report, between 2013 and 2021 the Project had achieved several crucial steps in its development schedule. By the summer of 2022, the Project had raised a total amount of US$ 124,702,100 (Including both equity and convertible notes) through four rounds of financing to finance the development phase of the Project;[1273] it was in advanced discussions with numerous other parties interested in construction debt, construction equity, or development equity;[1274] had obtained the signature of an [redacted] and a further expansion of that same agreement;[1275] had obtained an export license from the NEB that allowed it to export LNG quantities exceeding its liquefaction capacity;[1276] had employed over 80 employees for the two companies, and hired a dozen other expert consultants, advisors and specialized firms to advise on various aspects of the Project;[1277] had conducted feasibility, technical and commercial studies which confirmed the technical feasibility and commercial prospects of the Project;[1278] had commissioned and obtained on-site geotechnical studies, and on-site civil engineer studies to determine the technical specifications of the Project site and its layout;[1279] had obtained detailed estimates of OPEX, CAPEX, labour costs, production estimates, marine and shipping analyses;[1280] had conducted pre-FEED, and several FEED studies with industry-leading companies including

1273 Witness Statement of Vivek Bidwai (21 November 2023), Section VIII; Witness Statement of Jim Illich (21 November 2023), Section XI, **CWS-1**.

1274 Witness Statement of Vivek Bidwai (21 November 2023), para. 188.

1275 Witness Statement of Jim Illich (21 November 2023), Section VI.A and VI.B, **CWS-1**.

1276 Witness Statement of Vivek Bidwai (21 November 2023), paras. 73 to 75.

1277 Witness Statement of Jim Illich (21 November 2023), Section VIII, **CWS-1**.

1278 Witness Statement of Jim Illich (21 November 2023), Section IX.A, **CWS-1**.

1279 Witness Statement of Jim Illich (21 November 2023), paras. 79 to 91, **CWS-1**.

1280 Witness Statement of Jim Illich (21 November 2023), paras. 79 to 91, **CWS-1**.

Bechtel and Chiyoda;[1281] had pursued sustained discussions with local stakeholders, including provincial and federal authorities, the SPA, First Nations and local communities and internalized their input in the development and design of the Projects;[1282] had secured two energy blocks from Hydro-Québec (a combined 700-MW of hydropower) that would ensure the low-emission operation of the GNLQ plant and the Gazoduq natural gas transmission line at competitive energy rates; and had obtained a series of written reassurances and commitments by the Québec Government and IQ concerning other benefits it would enjoy, including tax holidays as a "major investment" and other forms of assistance.[1283]

b. *Second*, the Project had developed and implemented an innovative commercial strategy which included an innovative pricing mechanism that leveraged the Project's competitive advantages *vis-à-vis* its competitors in the U.S. Gulf Coast and was very attractive to off-takers and gas suppliers.[1284] It was also in advanced negotiations with numerous natural gas suppliers in Western Canada [1285] (including the [redacted] who were interested in supplying natural gas to Gazoduq at competitive rates).[1286] It had also entered into SPA agreements, term sheets or MoUs with important off-takers in Europe interested in its prodict (including [redacted] and Naftogaz) [1287] and had entered into commercial agreements with Siemens Energy [redacted].[1288] But for the wrongful refusal of the Project for which the Respondent is responsible, the GNLQ and Gazoduq Projects were on the threshold of reaching FID, which was scheduled to take place on 1 December 2023. [1289] This in turn would have resulted in a considerable increase in the commercial value of the Project.

c. [redacted]

1281 Witness Statement of Jim Illich (21 November 2023), paras. 93 to 95, **CWS-1**.

1282 Witness Statement of Jim Illich (21 November 2023), Sections IX.B and C, **CWS-1**.

1283 Witness Statement of Vivek Bidwai (21 November 2023), para. 156, **CWS-2.**

1284 Witness Statement of Vivek Bidwai (21 November 2023), Section V**, CWS-2**.

1285 Witness Statement of Vivek Bidwai (21 November 2023), Section IV.B**, CWS-2**.

1286 Witness Statement of Vivek Bidwai (21 November 2023), Section VII.D**, CWS-2**.

1287 Witness Statement of Vivek Bidwai (21 November 2023), Section VII**, CWS-2**.

1288 Witness Statement of Jim Illich (21 November 2023), para. 269, **CWS-1**; Witness Statement of Vivek Bidwai (21 November 2023), paras. 191 to 197**, CWS-2**.

1289 See Secretariat Report, paras. 4.57, 5.16, 6.84-6.107, **CER-1.**

[redacted]

d. *Fourth*, the broader geopolitical developments that followed the Respondent's refusal underlined the strong commercial opportunities of which the Project was wrongfully denied. Indeed, just a few days after the Federal Government refused the Project, the Russian Federation invaded Ukraine, which led to a series of sanctions and trade-restrictive measures against Russia by European States, as they gradually reduced their reliance on Russian natural gas to 0%. The unfolding energy crisis had a dramatic impact not only in the demand of sustainably-sourced, cleaner LNG from stable jurisdictions such as Canada, but also on the prices at which Canadian natural gas could be sold in the European market. [1292] As noted in the Secretariat Report:

> "Interest in U.S. LNG has increased dramatically in recent years, particularly since the Russian invasion of Ukraine. As a result, U.S. projects have signed LNG offtake agreements totalling [*sic*] over 70 MTPA in 2022 and 2023 signings were at a similar pace with 36 MTPA signed as of mid-2023. Many of the recent LNG offtake agreements secured by U.S. LNG projects have been with customers which had been in discussions with Symbio or GNLQ over the 2019 to 2022 period. " [1293]

e. Against this background, and despite the wrongful measures for which the Respondent is responsible, the Project continued to hold sustained discussions with European Governments (such as Germany) and off-takers who were eager to re-

---

1290 Witness Statement of Jim Illich (21 November 2023), paras. 170-171, **CWS-1**.

1291 [redacted]

1292 To be clear, the Claimant notes that global LNG prices were already at record-high levels even before the Respondent's wrongful decisions in breach of the NAFTA and Russian's aggression of Ukraine as a result of a combination of factors, even though the subsequent energy crisis accentuated the already high prices. *See, for example*, Bloomberg, "Gas Crunch Pushes Anxious Buyers to Pay More for Contracts", 12 January 2022. ("Worries that the current shortage of liquefied natural gas will persist through the middle of the decade are triggering a rush to sign long-term deals, pushing up the price of contracts for the super-chilled fuel. . . . LNG spot rates from Asia to Europe surged to records in 2021 as supply struggled to keep pace with the demand rebound from the depths of the pandemic.")

1293 Secretariat Report, para. 4.76, **CER-3**.

launch the Project and conclude off-take agreements with GNLQ, and even concluded some agreements. As noted in the Secretariat Report:

> "From an economic perspective, we believe it is reasonable to conduct an ex-post damages assessment that is premised on the assumption that the Projects would have continued to progress in the intervening period between the alleged date of breach and the current date, in accordance with its contemporaneous plans.
>
> As of July 2021, Claimant had completed studies demonstrating the technical and economic viability of the Projects, negotiated term sheets with potential offtakers (e.g., [redacted],) negotiated term sheets with potential upstream gas suppliers (e.g. [redacted]), signed an MoU with Siemens for the supply of project equipment, signed FEED agreements with UPI and Bechtel (and an EPC term sheet), and was in ongoing discussions with numerous potential and existing investors in the Projects . . .
>
> Additionally, after the alleged breaches in mid-2021, Claimant continued discussions with potential offtakers and investors who showed continued interest in the Projects due to prevailing market factors, including the conflict in Ukraine, the corresponding increase in European demand for North American gas and record high LNG prices globally. For these reasons, from an economic perspective, we believe it is reasonable to conclude Claimant would have continued to develop the Projects in accordance with its plans between mid-2021 and the current date."[1294]

888. It is therefore beyond doubt that but for the unlawful measures for which the Respondent is responsible under the NAFTA, Symbio's investments would have continued to increase in value, as it would have been able to enter into commercially-profitable agreements with natural gas providers and off-takers and reach FID in Q4 2023. In light of this increase in commercial value, the Claimant has elected to pursue its claim on the basis of the date of the award as the relevant valuation date.

889. While the above is the correct date of valuation at law, the Claimant hereby expressly reserves its right to reply to the Respondent's position as to what would have been the *ex ante* value of the investments at the time immediately before the Respondent's wrongful actions, if Canada were to argue in its Counter-Memorial that the latter is the appropriate date for valuation (*quod non*).

6. Currency of Compensation

890. In order to "wipe out" the consequences of the Respondent's wrongful acts and ensure full reparation, damages must be paid in a G7 currency for the following reasons.

[1294] Secretariat Report, 5.8 – 5.11**, CER-3.**

a. *First*, it is the usual practice of international tribunals to provide for payment in a convertible currency, which includes US dollars.[1295]

b. *Second*, Article 1110(4) of the NAFTA requires the payment of compensation upon lawful expropriation to be either in a G7 currency or, if in another currency, to disregard fluctuations in that other currency. It stands to reason that the modalities for the payment of damages in case of wrongful expropriation should be no less favourable than those applicable in case of wrongful expropriation. Indeed, the *Vivendi II* tribunal agreed with the principle from the *Lighthouses Arbitration* that a party ought not to be prejudiced by the effects of a devaluation that takes place between the date of the wrongful act and the determination of the amount of damages, which is consistent with Article 1110(5) of the NAFTA.[1296]

891. Accordingly, the Claimant seeks an award of compensation in US dollars.

7. The FMV of the Claimant's investments

892. On the basis of the above-mentioned principles, the Claimant instructed Secretariat as an independent valuation expert to determine the FMV of the Claimant's investments in the GNLQ and Gazoduq Projects.

893. In discharging its mandate, Secretariat has taken as the point of departure the two contemporaneous economic models that Symbio provided to Secretariat, dated December 2019 (for GNLQ) and January 2022 (for Gazoduq).[1297] Symbio started to develop these two models around 2016 with the expert advice from Société Générale, and continued to refine and develop them on the basis of input it received from dozens of interested investors and other commercial counterparties over the course of due diligence. This includes institutional investors, high net worth individuals, off-takers and natural gas suppliers, [redacted].[1298] These models represent a strong basis to conduct the present valuation, as they offer contemporaneous evidence of the assumptions and data that were vetted and approved by highly-sophisticated investors and commercial counterparties.

894. In preparing its report, Secretariat has proceeded as follows:

a. Consistently with the principles enunciated in above and the *Factory at Chorzów* judgment, the Claimant instructed Secretariat to quantify Symbio's losses relative to a "but for scenario" where Respondent would have acted consistently with its

---

1295 *See Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (Vivendi II)*, ICSID Case No. ARB/97/3, Award (20 August 2007), para. 8.4.5 on p. 256, **CL-00063;** See also *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2007), para. 361, **CL-000115.**

1296 *See, e.g., Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (Vivendi II)*, ICSID Case No. ARB/97/3, Award (20 August 2007), para. 8.4.5 on p. 256, **CL-00063.**

1297 Witness Statement of Tony Le Verger (21 November 2023), paras. 24-25, **CWS-3**.

1298 Witness Statement of Tony Le Verger (21 November 2023), paras. 60-67, **CWS-3**.

NAFTA obligations and approved the GNLQ Project, which would have enabled Claimant to continue progressing the Projects.[1299]

b. Consistently with the Claimant's election of the date of the award as the relevant valuation date, Secretariat conducted its analysis on an *ex post* basis, which entails a valuation of the Projects as of a current date (assumed to be 30 September 2023 for purposes of its First Quantum Report, and may be supplemented in further pleadings as may be required).[1300]

c. In determining its *ex post*, but for analysis, Secretariat valued the GNLQ and Gazoduq Projects as "inextricably linked projects", on the assumption that the GNLQ plant would capture all of the value related to the downstream sales of LNG.[1301]

895. In terms of valuation method, Secretariat has applied a Discounted Cash-Flow method:

> "Implementing an ex-post approach entails determining the cash flows (if any) which Symbio would have generated But-for Respondent's alleged breaches from the date of breach until the current date as well as the lost value of Symbio's investments as of the current date. This lost value is calculated as the But-for Value of Symbio's investments (i.e., the value But-for the alleged breaches of Respondent) less the Actual Value of Symbio's investments (which is zero given that the Projects have been permanently terminated). Accordingly, our analysis focuses on a quantification of Symbio's historical lost cash flows and the current But-for value of the Projects that Symbio has lost due to the alleged expropriation of its investments."[1302]

896. Upon determining the Project's projected after-tax cash-flows, Secretariat has applied as an off-set to damages the amounts of capital that Symbio would have had to invest to continue developing the Project from 2021 until today (to which it applied interest to account for the time value and opportunity cost of money).[1303] Based on the components summarized above, Secretariat has quantified Symbio's ex-post damages as follows:

[1299] Secretariat Report, **CER-0003,** para. 5.7.

[1300] Secretariat Report, **CER-0003,** para. 5.8.

[1301] Secretariat Report, **CER-0003,** para. 5.12.

[1302] Secretariat Report, **CER-0003,** para. 5.12.

[1303] Secretariat Report, **CER-0003,** para. 5.12.

USD '000s	Value
GNLQ But-for Value	1,051,195
Gazoduq Damages	39,322
GNLQ But-for Historical FCFF	(85,869)
Total Losses	**1,004,648**

897. Accordingly, the Claimant claims no less than **US$ 1,004,648,000** in damages for the economic loss and damage suffered by Symbio (as of 30 September 2023).

898. In this juncture, the Claimant wishes to emphasize that the damages claimed in this Memorial cannot and do not reflect the total amount of the loss or damage that Symbio suffered as a result of the measures in violation of the NAFTA for which the Respondent is responsible. In fact, as set out in the Request for Arbitration, based upon financial modelling as of 2021 the GNLQ Project was expected to generate an undiscounted total after-tax profit to investors of no less than US$ 16 billion over its initial 25-year operating period. The Gazoduq Project was expected to generate an undiscounted total after-tax profit to investors of no less than US$ 4 billion during its initial 25-year operating period. Based on conservative assumptions predating the recent surge in prices on the LNG market, as of 2021 the two Projects together were reasonably estimated to generate after-tax profits totalling no less than US$ 20 billion.[1304]

899. For purposes of the present valuation, however, the Claimant is required to establish its valuation at the latest as of the date of the Award, at which time the Project would have been substantially but not fully launched. The Respondent's unlawful measures have therefore in effect triggered a premature valuation of the investment, representing only a fraction of the Claimant's and Symbio's reasonably-to-be-expected projected profits.

900. Moreover, in the exercise of its independent and professional expert judgment, Secretariat has produced a valuation which relies upon reasonable and conservative assumptions with respect to a number of economic variables affecting valuation. Indeed, Secretariat has systematically refrained from adopting the most favourable or optimistic assumptions or hypotheses that could have resulted in a higher overall figure, despite the fact that there is evidence and objective data to ground a higher valuation. Secretariat's valuation therefore represents a reasonable, fair, conservative and objective assessment of the Project's economic value as of 30 September 2023 (a proxy for the Award date).

901. Accordingly, Claimant hereby reserves its right to amend, supplement or modify its claim in damages in the course of these proceedings, and to update this amount to the valuation date of the award in accordance with the principles set out above.

[1304] Request for Arbitration, para. 41.

8. Period by Which Compensation Must be Paid

902. In order to "wipe out" the consequences of the Respondent's wrongful acts and ensure full reparation, the said amount of damages must be paid immediately upon the rendering of the final award subject to interest in accordance with the principles set out below.

D. Interest

903. In order to "wipe out" the consequences of the Respondent's wrongful acts and ensure full reparation, damages must include interest on the principal. Article 1135(2)(b) of the NAFTA provides that where a claim is made under Article 1117(1) and a Tribunal makes a final award against a Party, the tribunal may award "an award of monetary damages *and any applicable interest*". Thus, "NAFTA clearly contemplates the inclusion of interest in an award."[1305]

904. Although the NAFTA provides for payment of interest in the case of a lawful expropriation, it does not establish a *lex specialis* for the payment of interest in the case of an unlawful expropriation or other non-expropriatory breaches. Accordingly, this matter is governed by customary international law, which requires as follows.

1. Customary International Law Requires Payment of Interest on Damages

905. Absent anything to the contrary in the applicable law (which is not the case here), it is an accepted legal principle that the State in breach must pay interest on the damages awarded to the injured party.[1306] This is so that the injured party is restored to the position it would have enjoyed had the breach not occurred. In other words, interest is payable in order to ensure that full reparation is made. This is recognised by Article 38 of the ILC Articles on State Responsibility, which states:

> "1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
>
> 2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled."[1307]

906. Article 38 was characterised as "an expression of customary international law" by the tribunal in *Siemens v. Argentina*, which considered that in determining the applicable interest

---

1305 *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 113, **CL-00059**.

1306 *See, e.g., Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (Vivendi II)*, ICSID Case No. ARB/97/3, Award (20 August 2007), paras. 9.2.1-9.2.2, **CL-00063**.

1307 *See* ILC Articles on the Responsibility of States, Article 38, **CL-000111**.

rate, the guiding principle was to ensure "full reparation for the injury suffered as a result of the internationally wrongful act".[1308]

907. As the tribunal in *Continental Casualty v. Argentina* put it:

> "As a general principle, almost invariably, justice requires that the wrongdoer who has deliberately failed to pay compensation should pay interest for the period during it has withheld that compensation unlawfully. The claimant, in addition to suffering from the wrongdoing giving rise to compensation, has suffered a further loss from non-payment of that compensation when it should have been paid by the wrongdoer. Moreover, a wrongdoer withholding payment may be unjustly enriched by its deliberate non-payment of such compensation, at the expense of the claimant. In these circumstances, therefore, full reparation will include an order for interest."[1309]

908. Likewise, the tribunal in *Santa Elena v. Costa Rica* held:

> "[Claimant] is entitled to the full present value of the compensation that it should have received at the time of the taking. Conversely, the taking state is not entitled unjustly to enrich itself by reason of the fact that the payment of compensation has been long delayed."[1310]
>
> "[T]he amount of compensation should reflect, at least in part, the additional sum that his money would have earned, had it, and the income generated by it, been reinvested each year at generally prevailing rates of interest."[1311]

909. Similarly, the tribunal in *Vivendi II v. Argentina* held that:

> "The object of an award of interest is to compensate the damage resulting from the fact that, during the period of non-payment by the debtor, the creditor is deprived of the use and disposition of that sum he was supposed to receive."[1312]

910. Further, in *Sunlodges v. Tanzania*, having decided to award interest at a rate of 7% compounded annually, the tribunal observed that:

> "This rate strikes an appropriate balance between the two policy purposes of an interest claim – compensating the claimant for the temporary withholding of

---

1308 *See Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2007), paras. 395-396, **CL-000115**.

1309 *See Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award (5 September 2008), para. 308, **CL-000128**.

1310 *See Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award (17 February 2000), para. 101, **CL-000125**.

1311 *Id.*, para. 104.

1312 *See Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (Vivendi II)*, ICSID Case No. ARB/97/3, Award (20 August 2007), para. 9.2.3, **CL-00063**.

> money due to it, and precluding the respondent's unjust enrichment from the use of the claimant's funds."[1313]

911. These decisions identify two important functions of interest, namely: **(i)** compensating the claimant for the temporary withholding of money due to it; and **(ii)** preventing the respondent's unjust enrichment, arising from the fact that it has had use of the money.[1314] As to the second element, the prohibition on unjust enrichment is recognised as a general principle of international law, and itself reflects the broader principle that a party may not profit from its own wrongdoing.[1315] An additional function as regards interest post-award is **(iii)** to ensure prompt payment of the award debt.[1316]

2. Compound Interest

912. Compound interest is frequently awarded by tribunals in investment treaty cases. It reflects the commercial reality in that a company which has been denied money has been denied the use of that money.

913. As was stated by the tribunal in *Santa Elena v. Costa Rica*:

> "[W]here an owner of property has at some earlier time lost the value of his asset but has not received the monetary equivalent that then became due to him, the amount of compensation should reflect, at least in part, the additional sum that his money would have earned, had it, and the income generated by it, been reinvested each year at generally prevailing rates of interest. It is not the purpose of compound interest to attribute blame to, or to punish, anybody for the delay in the payment made to the expropriated owner; it is a mechanism to ensure that the compensation awarded the Claimant is appropriate in the circumstances."[1317]

1313 *See Sunlodges Ltd and Sunlodges (T) Limited v. The United Republic of Tanzania*, PCA Case No. 2018-9, Award (20 December 2019), para. 502, **CL-000134**.

1314 *See* Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law* (2nd edn, OUP 2017), paras. 6.09-6.39, **CL-00093**.

1315 *See* Charles Kotuby and Luke Sobota, *General Principles of Law and International Due Process* (OUP 2017), pp. 138-139, **CL-000128;** and *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA and Ors*, 6- I.US.C.T.R.219, Award No. 141-7-2 (June 1984), p. 5, **CL-000129** ("It is a well-recognized principle in many municipal systems and in international law that no one should be allowed to reap advantages from their own wrong …").

1316 *See* Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law* (2nd edn, OUP 2017), paras. 6.35-6.39, **CL-00093**. The ICJ referred to the "importance of prompt compliance" when setting post-award interest in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), Compensation, Judgment, I.C.J. Reports 2012*, p. 20, **CL-000131**. Importantly, as Professor Marboe notes, post-award interest will only encourage prompt payment if the interest rate chosen is not less than the borrowing rates available to the State from other sources. Put simply, if post-award interest is set at a rate such that it is cheaper for the State to avoid paying the award debt than it is to borrow money from the market, post-award interest will not meet the objective of encouraging prompt payment.

1317 *See Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award (17 February 2000), para. 104, **CL-000125**. For examples of decisions endorsing this view, see *ADC Affiliate Ltd & ADC & ADMC Management Ltd v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), para. 522, **CL-00086;** *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award (5 September 2008), para. 312, **CL-000128;** *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8; Award (6 February 2007), para.

914. The tribunal in *Continental Casualty v. Argentina* added that:

> "[C]ompound interest reflects economic reality in modern times … The time value of money in free market economies is measured in compound interest; simple interest cannot be relied upon to produce full reparation for a claimant's loss occasioned by delay in payment … This discretionary approach to the award of compound interest under international law may now represent a form of '*jurisprudence constante*' in ICSID awards."[1318]

915. Compound interest has been awarded in the NAFTA context, including in awards rendered against the Respondent.[1319] In *Pope & Talbot*, for example, Canada was ordered to pay 5% interest compounded quarterly. Notably, Canada had argued for interest to be fixed at 5% on a simple basis by reference to *inter alia* the Canadian Interest Act and Federal Court Act, albeit accepting that the tribunal was not bound by domestic law and referring instead to the Canadian legal rate as a "helpful benchmark". The tribunal agreed that it was not bound by that rate, and chose instead to award interest on a compound basis.[1320] In *S.D. Myers*, Canada had again argued for interest to be fixed at 5% on a simple basis, arguing that the tribunal should be "guided" by reference to *inter alia* the Canadian Interest Act and Federal Court Act. The tribunal ordered Canada to pay interest at the Canadian prime rate compounded annually.[1321]

916. Compound interest has also been awarded both in cases where the investment treaty expressly referred to the provision of interest (without expressly stating that compound interest was to apply) and also in cases where the investment treaty made no reference to the payment of interest at all.[1322]

399, **CL-000115;** *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award (22 April 2009), para. 146, **CL-00095**.

1318 *See Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award (5 September 2008), paras. 309-312, **CL-000128**.

1319 *See, e.g., Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 128, **CL-00059**. ("So as to restore the Claimant to a reasonable approximation of the position in which it would have been if the wrongful act had not taken place, interest has been calculated at 6% p.a., compounded annually.") *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009), para. 544, **CL-00021.** ("interest shall be compounded annually")**;** *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, NAFTA, ICSID Case No. ARB(AF)/07/4, Award (20 February 2015), paras. 170 and 178(a), **CL-000139**.

1320 *See Pope & Talbot Inc. v. Government of Canada*, NAFTA, Award in Respect of Damages (31 May 2002), paras. 88-90 and 91, **CL-000135** ("the Tribunal awards interest on the principal sum at the rate of 5% per annum compounded quarterly as an appropriate rate"); and Canada's Statement of Defence (18 August 2001), paras. 145-149, **CL-000136**.

1321 *See S.D. Myers, Inc. v. Government of Canada*, NAFTA, Second Partial Award (21 October 2002), paras. 306-307 and 312, **CL-000137**; and Canada's Counter-Memorial (Damages Phase) (7 June 2001), paras. 199-209, **CL-000138**.

1322 *See, e.g., Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award (22 April 2009), paras. 96 and 146, **CL-00095;** (where the treaty made no reference to the payment of interest); and *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award (12 April 2002), paras. 104 and 174-175, **CL-000132** (where the treaty provided that compensation upon expropriation "shall include interest until the date of payment").

917. Accordingly, the Tribunal is empowered under Article 1135(2)(b) of the NAFTA to award interest on a compound basis and should do so in order to ensure full reparation to Symbio. Compounding is also a necessary component of the "commercially reasonable rate" required by the NAFTA, for the same reasons as established in the above-quoted cases.

3. Period for Interest

918. As explained above, it is the Claimant's position that the relevant valuation date should be taken as the date of the final award holding the Respondent liable for violations of the NAFTA. In that case, interest is not paid between the date of breach and the date of the award, but is payable thereafter (i.e. from the date of the award until the date of payment). If, however, the Tribunal were to take as the relevant valuation point a date prior to the date of indirect expropriation (an issue upon which the Claimant has expressly reserved its position), interest must accrue from the date of breach until the date of payment.[1323]

919. If, however, the Tribunal were to take as the relevant valuation point a date prior to the date of indirect expropriation (an issue upon which the Claimant has expressly reserved its position), interest must accrue from the date of breach until the date of payment.[1324]

4. Applicable Interest Rate

920. As stated above, the object of awarding interest is: **(i)** to compensate the claimant for the temporary withholding of money due to it; **(ii)** to prevent the respondent's unjust enrichment, arising from the fact that it has had use of the money; and **(iii)** as regards interest post-award, to ensure prompt payment of the award debt.

921. Therefore, the question is: what would the Claimant and Symbio have earned on the compensation owed if they had received it on or promptly after the date of *de facto* expropriation. In the interests of narrowing the potential issues in dispute, the Claimant is willing to accept a rate of 6%. Notably, this corresponds to Canada's own statutory rate, which it has previously argued should be applied by NAFTA tribunals (see below).

922. Nevertheless, in the interests of narrowing the potential issues in dispute, the Claimant is willing to accept a rate of 6%. The rate claimed (6%) is well-supported by investment treaty tribunals and international courts, for example in *Santa Elena v. Costa Rica*, *ADC v.*

1323 *See, e.g., ADC Affiliate Ltd & ADC & ADMC Management Ltd v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), paras. 520 and 522, **CL-00086**. *See also Windstream Energy LLC v. Government of Canada*, NAFTA, PCA Case No. 2013-22, Award (27 September 2016), paras. 484 and 486 (investment valued at the date of the award, **CL-00046.**

1324 *See Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2007), para. 397, **CL-000115** ("For purposes of erasing the effects of the expropriation, interest should accrue from the date the Tribunal has found that expropriation occurred …"). See also e.g. *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award (5 September 2008), paras. 264-266 (breach) and 314-315 (interest period), **CL-000128**; *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award (22 April 2009), paras. 116 (date of breach) and 148(3) (interest period), **CL-00095** and *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, Award (29 January 2016), paras. 571 (date of breach) and 594-595 (interest period), **CL-000133.** *See also* the ILC Articles on State Responsibility, Article 38(2), **CL-000111**.

Hungary, *Vivendi II v. Argentina* (all 6%), *Sunlodges v. Tanzania* (7%), *Funnekotter v. Zimbabwe* (10%), *Tenaris v. Venezuela* (9%), the PCIJ's decision in the *Wimbledon* case (6%), various Iran-US Claims Tribunal decisions (7.5% to 10%), and the ICJ's decision in *Ahmadou Sadio Diallo* (6%)..[1325]

923. Further, where NAFTA claims have been upheld against Canada, it has typically been ordered to pay compound interest at a rate in the region of 5-6%:

- In *Pope & Talbot*, Canada was ordered to pay interest at the rate of 5%, compounded quarterly.[1326]

- In *S.D. Myers*, Canada was ordered to pay interest at the Canadian prime rate plus 1%, compounded annually. (For reference, the Canadian prime rate plus 1% totalled: 5.5% at the time of the award; and 8.20% at present, November 2023.[1327])

- In *Mobil*, Canada was ordered to pay interest at the 12-month Canadian Dollar LIBOR rate plus 4%, compounded monthly. [1328] (For reference, that rate totalled approximately 6% when proposed by the claimants in July 2012 – it is not possible to

---

1325 For tribunal decisions, *see, e.g., Compañía del Desarrollo de Santa Elena, S.A. v. The Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award (17 February 2000), paras. 104-107 and 111(3), **CL-000125** (and Prof Marboe's explanation thereon – see citation below); *ADC Affiliate Ltd & ADC & ADMC Management Ltd v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 October 2006), paras. 520, 522 and 543, **CL-00086;** *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (Vivendi II)*, ICSID Case No. ARB/97/3, Award (20 August 2007), paras. 9.2.8 and 11.1(vi), **CL-00063**. Various other examples are cited at Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law* (2nd edn, OUP 2017), paras. 6.164 and 6.167-6.168, **CL-00093**. For examples of higher rates awarded, see e.g. *Sunlodges Ltd and Sunlodges (T) Limited v. The United Republic of Tanzania*, PCA Case No. 2018-9, Award (20 December 2019), para. 502, **CL-000134** (awarding interest at 7%); *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award (22 April 2009), paras. 143-146, **CL-00095** (awarding interest at 10%); and *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, Award (29 January 2016), paras. 586-587 and 594-595, **CL-000133** (awarding interest at 9%). For international court decisions, *see, e.g.*, Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law* (2nd edn, OUP 2017), paras. 6.162-6.163, 6.166 and 6.170-6.171, **CL-00093**, referring to the PCIJ's decision in the *Wimbledon* case (6%) and Iran-US Claims Tribunal decisions (7.5% to 10%); and the ICJ's award of interest at 6% in *Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of Congo), Compensation Judgment (19 June 2012), p. 20, **CL-000131**.

1326 *See Pope & Talbot Inc. v. Government of Canada*, NAFTA, Award in Respect of Damages (31 May 2002), paras. 88-90 and 91, **CL-000135**; and Canada's Statement of Defence (18 August 2001), paras. 145-149, **CL-000136**. Similarly, the tribunal in *Sunlodges v. Tanzania* had regard to the respondent's internal judgment interest rate in setting the rate due under the award: see *Sunlodges Ltd and Sunlodges (T) Limited v. The United Republic of Tanzania*, PCA Case No. 2018-9, Award (20 December 2019), para. 502, **CL-000134**.

1327 For the Canadian prime rate in October 2002 (4.5%) and September 2023 (7.20%), *see* screenshots from the Bank of Canada's website at **Exh. C-00410** and Exh. **C-00411**, available online at <https://www.bankofcanada.ca/rates/banking-and-financial-statistics/posted-interest-rates-offered-by-chartered-banks/>, last accessed on 2 October 2023**.**

1328 *See Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, NAFTA, ICSID Case No. ARB(AF)/07/4, Award (20 February 2015), paras. 170 and 178(a), **CL-000139.**

state the current value as this LIBOR rate was discontinued in 2013, prior to the *Mobil* tribunal's award.[1329])

- In *Windstream*, the tribunal found that pre-award interest was inapplicable since the loss was valued as at the date of the award. However, it is notable that Canada agreed with the claimants that a rate of 3%, compounded annually, would be appropriate if pre-award interest was applicable. As to post-award interest, the tribunal rejected the claim for this on the basis that it "cannot contemplate that the Respondent will not comply".[1330] That approach to post-award interest is contrary to the standard of full reparation enunciated in the *Chorzów Factory* standard and the usual practice of tribunals, and is misguided – indeed, whereas the *Windstream* tribunal's approach could result in substantial prejudice to the claimant if the supposedly 'unthinkable' outcome does ultimately transpire, an order for post-award interest will not prejudice the State at all if it complies promptly (i.e. the balance of harm lies clearly in favour of ordering post-award interest).

- In *Bilcon*, Canada was ordered to pay interest at the rate of the average one-year U.S. Treasury bill yield for the corresponding calendar year, compounded annually. For reference, that rate (which is regarded as risk-free) totalled approximately 2% at the time of the award; but 5.23-5.47% at present.[1331] While this rate was lower than the others awarded against Canada, this can be explained by the fact that the claimants were the ones to have proposed this interest basis.[1332] Moreover, the current average one-year U.S. Treasury bill yield is much closer to the rate claimed (5%).

924. By way of further support for the claimed rate, the Claimant refers the Tribunal to the Wall Street Journal Prime Rate. This rate is an aggregate average of the various prime rates that ten of the largest banks in the United States charge to their highest credit quality customers for loans with relatively short-term maturities.[1333] It thus represents a "commercially reasonable rate". In fact, the tribunal in *Bridgestone v. Panama* recently ordered interest on Panama's costs award at the WSJ Prime Rate *plus 2%*.[1334] The WSJ Prime Rate was 3.25%

1329 For the 12-month Canadian Dollar LIBOR rate in July 2012 (2%) and the date of discontinuance, see the printout from <https://www.global-rates.com>, last accessed on 21 November 2023**, Exh. C-00412.**

1330 *See Windstream Energy LLC v. Government of Canada*, NAFTA, PCA Case No. 2013-22, Award (27 September 2016), paras. 472, 486 and 515(f), **CL-00046**.

1331 For the average one-year U.S. Treasury bill yields, see the level chart on the printout from <https://ycharts.com>, last accessed on 21 November 2023, at **Exh. C-00230.**

1332 *See Bilcon of Delaware et al v. Government of Canada*, NAFTA, PCA Case No. 2009-04, Award on Damages (10 January 2019), paras. 318, 321 and 400(b), **CL-000140**.

1333 *See* Investopedia, "Wall Street Journal Prime Rate" (10 August 2021), available online at <https://www.investopedia.com/terms/w/wall-street-journal-prime-rate.asp>, last accessed on 21 November 2023**, Exh. C-00306**.

1334 *See Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama*, ICSID Case No. ARB/16/34, Award (14 August 2020), paras. 576 and 589-590, **CL-000141**.

throughout 2021 and 3.50% in February-March 2022,[1335] so a WSJ Prime Rate plus 2% would amount to 5.25% and 5.50% respectively.

925. Consequently, the Claimant claims interest at a rate of 5%, compounded annually from the date of the award, on the basis that the relevant valuation date should be taken as the date of the final award. If, however, the Tribunal were to take as the relevant valuation point a date prior to the date of indirect expropriation (an issue upon which the Claimant has expressly reserved its position), the Claimant claims interest at a rate of 6%, compounded annually from the earliest date of the breaches until the date of payment.

E. Declaratory Relief

926. As particularised in further detail below, the Claimant requests the Tribunal to make a declaration that Canada has acted in violation of Articles 1102, 1103, 1105 and 1110(1) of the NAFTA. Declarations in respect of wrongful conduct as a form of relief are common practice in international arbitral tribunals,[1336] and are appropriate here.

F. Costs

927. The Claimants request that the Tribunal, pursuant to Article 61(2) of the ICSID Convention, order Canada: to pay the Claimant all of their legal and other costs and expenses in respect of the arbitration, plus compound interest thereon at the same rate and interval as on the damages; and to bear in full: (a) the costs of the Tribunal, Tribunal Assistants approved by the Parties and any Tribunal-appointed experts, and (b) the administrative charges and direct costs of the Centre, including by ordering Canada to pay to the Claimant any share paid in advance in respect of such costs, plus compound interest thereon.

928. Such orders are necessary to ensure full reparation. The Claimant will brief the Tribunal on the issue of such costs more fully in the post-hearing phase, in the usual manner.

G. Reservation of Rights

929. The Claimant's position as to quantum is premised on the basis that there has been an unlawful expropriation of its investments under Article 1110(1) of the NAFTA, in conjunction with a breach of Articles 1102, 1103 and 1105 thereof, which has resulted in those investments being rendered worthless.

930. If the Tribunal were to find a lesser violation of the NAFTA, it will be necessary to receive additional submissions as to quantum once that violation has been defined by the Tribunal – this approach is necessary as it would be difficult and highly inefficient for the parties to

---

1335 *See* Wikipedia, "Wall Street Journal prime rate": "Historical Data", available online at <https://en.wikipedia.org/wiki/Wall_Street_Journal_prime_rate>, last accessed on 21 November 2023, **Exh. C-00316.**

1336 *See* James Crawford, *The International Law Commission's Articles on State Responsibility* (CUP 2002), p. 233, para. 6, **CL-000114.** *See also* e.g. *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), paras. 955, 957 and 1012-1019, **CL-00097.**

seek to define every possible permutation and the different losses that correspond to every such breach. The Claimant reserves its position in that regard.

VI. PRAYER FOR RELIEF

931. For the reasons stated above, the Claimant, Ruby River Capital LLC, respectfully requests, on behalf of Symbio Infrastructure Limited Partnership, that the Arbitral Tribunal render an Award and:

    a. Declare Canada in breach of Articles 1102, 1103, 1105(1) and 1110 of NAFTA in light of the impugned measures;

    b. Award monetary compensation to Symbio Infrastructure Limited Partnership, pursuant to Articles 1117 and 1135(2)(b) of the NAFTA, in the amount of **US$ 1,004,648,000** for the injuries and losses it has incurred by reason of, or arising out of, Canada's impugned measures in breach of the NAFTA;

    c. Award post-Award compound interest on the amount of damages awarded, at a rate of 6%, compounded annually, until the date of payment

    d. Award compensation for all the costs of the arbitration and costs of legal representation, plus compound interest thereon at the same rate and interval as on the damages; and

    e. Grant such other relief as the Arbitral Tribunal may deem just.

932. The Claimant reserves its right to amend, modify or supplement these claims.

Dated: 21 November 2023

London, UK

Respectfully submitted,

Steptoe & Johnson, UK LLP

Christophe Bondy