

CANADA

RÉGIE DE L'ÉNERGIE DU QUÉBEC

PROVINCE OF QUEBEC

Re: Revised application for the
modification of rates for the
transmission of electric power

DISTRICT OF MONTREAL

HYDRO-QUÉBEC

("HQ")

Applicant

Nº: R-3401-98

And

PG&E NATIONAL ENERGY GROUP, INC.

("NEG")

Intervener

**NEG'S WRITTEN ARGUMENTATION
ON THE AMENDED OPEN ACCESS TRANSMISSION TARIFF**

I. INTRODUCTION

- In accordance with the process prescribed by the Régie de l'Énergie du Québec ("the Régie") for Application R-3401-98, PG&E National Energy Group, Inc. ("NEG") hereby submits its written argumentation on TransÉnergie's ("HQ-TE") amended *Open Access Transmission Tariff* ("OATT").

II. CONTEXT

- Considering that the hearings held on November 14th covered only HQ-TE's revised OATT integrating the Régie's decision # 2002-95, NEG limited its participation by communicating succinctly its point-of-view on two specific issues and by expressing its concerns on some additional modifications submitted on October 18th, 2002, by HQ-TE following the September 24th, 2002 Working Group session.
- NEG acknowledged the difficult task that HQ-TE has in integrating the elements of the Decision and did not intend to reopen any debate. Thus, NEG based its presentation on simple commercial and regulatory observations of public interest, in light of the following principle adopted by the Régie in its decision 2002-95:

« La réglementation économique des activités de transport d'électricité, dans un secteur électrique nord-américain marqué entres autres par l'ouverture des marchés et l'accès libre et non discriminatoire au transit d'électricité, requiert, en vertu des règles de réciprocité, que la réduction des services de transport ferme se

réalisent d'une manière comparable à celle dont bénéficie Hydro-Québec sur les marchés avoisinants.¹ »

- By the adoption of HQ's *Bylaw 659*, the Quebec Government was *de facto* enforcing the FERC *pro forma* tariff². HQ made a clear commitment to comply to FERC requirements and to offer other market participants reciprocity to its transmission network and wholesale market.
- FERC Order 888³ principle addressed the introduction of the Open Access Transmission Tariff (OATT)⁴ and the definition of a single tariff that offers network (load-based) and point-to-point (contract-based) transmission services. It also contained minimum terms and conditions for the provision of non-discriminatory services, as well as pricing policies, which serve to promote efficient investments in generation and transmission.
- The reciprocity requirement is constant and a breach of reciprocity should allow any stakeholder to present a complaint to FERC. In failing to comply with the reciprocity principle, HQ-US's certification could be challenged. NEG believes that reciprocity is essential, as clearly expressed by FERC, if HQ-US is to keep its U.S. wholesale certification⁵.
- Furthermore, we strongly support a higher degree of comparability between the U.S. and Quebec energy markets, especially in regard to critical operational issues such as transmission access and pricing. In NEG's view, in order for there to be true comparability between the U.S. and Quebec energy markets, fair and non-discriminatory access must be provided to HQ-TE's transmission network.

III. DISTRIBUTOR USAGE OF THE INTERCONNECTION UNDER SECTION 38.9

- Section 13.2 of FERC Standard OATT indicates clearly that a long-term firm service have a priority status over a short-term firm or a non-firm services, and Section 13.6 requires that curtailments necessary to maintain reliable operations of the system will be made on a non-discriminatory basis. The Transmission provider can curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. Curtailments of Firm Point-To-Point Service are only allowed for reliability not for economic purchases that benefit Native Load.
- Under the revised Section 38.9, HQ-TE gives the Distributor a priority access to Quebec interconnection capacity in order to serve the Quebec local load, by suspending long-

¹ D-2002-95, p. 342.

² Hydro-Québec bylaw number 659 respecting the conditions and rates for open access transmission service, R.R.Q. C.H. H-5, r.0.3.

³ Testimony of Jack Hawk, June 1, 2001, pages 22 to 36.

⁴ NEG-9, page 3.

⁵ NEG refers the Régie to two decisions of the FERC filed in bulk as exhibits SE-STOP-32, doc. 2, regarding HQ-US; docket ER-97-851-001, November 12, 1997 which refers to docket ER-07-851-000 Order of May 9, 1997 and more particularly to its pages 6 and 7.

term firm point-to-point transmission service contracts (one year or more) with a twelve-month notice period.

- Following questioning from interveners, HQ-TE submitted on October 18 the following rational behind the revised Section 38.9:

*« 38.9 Compte-tenu que la Régie a reconnu que les interconnexions étaient des ressources désignées du Distributeur (p. 330, 3e par.), il est nécessaire de préciser les modalités du droit de rappel des interconnexions par le Distributeur, pour permettre au Transporteur de commercialiser toute capacité d'interconnexions non requise pour les fins d'alimentation de la charge locale et en traitant de façon non discriminatoire tous les clients des services point à point. C'est ainsi que le Transporteur et le Distributeur ont convenu qu'un préavis de douze (12) mois était adéquat pour répondre aux besoins de la charge locale **Nouveau** : ...Aucune limite n'est imposée à l'utilisation de la capacité disponible du réseau...; ...limitera la capacité d'un client du service ferme d'utiliser la capacité d'importation ainsi désignée sur les interconnexions du Transporteur avec les réseaux voisins de la façon prévue au paragraphe suivant... Ces modifications sont requises pour préciser le texte.⁶ »*

- These explanations did not provide satisfactory rational to justify such priority right. Indeed, they even generate more questions, especially with the new concept of "available capacity". If it means only the capacity not already subscribed by HQ-TE customers, such priority right wont have any reason being. Since the notice mechanism has been kept, we consider that it is not the case.
- The reference to Decision 2002-95 on this issues only addressed the inclusion of the Distributor as a regular customer of HQ-TE for the use of the interconnection:

« Puisque les interconnexions sont des ressources désignées pour la desserte de la charge locale, la Régie estime qu'il est approprié que le coût du transport pour les importations requises pour combler les besoins de cette clientèle soit compris à même le coût du transport facturé à la charge locale, ou encore, selon les dispositions de l'article 22.1 des "Tarifs et conditions".⁷ »

- A fundamental issue remains with such ability to "bump" other firm customers for economic reasons. Indeed, the Régie's decision on this aspect acknowledges that the interconnections are designated resources to supply the native load and that the cost to import power to supply this customer segment should be included in the rate already charged to the native load or under the terms of Section 22.1 (right for a firm service customer to switch no-firm on another interconnection)... not to "bump" another firm customer! HQ-TE went further than the Régie's decision on this aspect.

⁶ Commentaires additionnels d'Hydro-Québec TransÉnergie sur les modifications effectuées aux tarifs et conditions du service de transport, p. 10, 2002-10-18.

⁷ Décision 2002-95, p. 330, 3e par.

- NEG is seriously concerned by the potential scope of HQ-TE's following addition at Section 13.2: "..., subject to the terms of Section 38.9 on the native load." We believe that it represents a direct breach of the reciprocity principle of FERC Order 888 by creating a new class of customer, as well as against the letter and the spirit of the decision 2005-95:

« La Régie est d'avis que si l'on devait exiger, en cas de réduction de service, une priorité absolue à la charge locale, ce serait incompatible avec le fait d'offrir des contrats fermes à des prix reflétant un service de nature ferme. Accepter la proposition de certains intervenants d'accorder une priorité absolue à la charge locale reviendrait à définir un nouveau type de service de transport de point à point de qualité moindre.⁸ »

- Such modification could significantly affect the essence of this section, and be a breach of the reciprocity requirement behind FERC Orders 888, by creating a new "superior" class of firm service for the Distributor, to the detriment of all other firm customers.

U.S. Regulatory Environment

- In the U.S., the FERC instructed utilities to file specific language as part of their Open Access Transmission Tariff (OATT)⁹ addressing the priority of Point-to-Point Firm Transmission. Section 13.6 of the OATTs includes this language. The TVA and PacifiCorp OATT¹⁰ are used for illustration purposes.

TVA OATT

- Section 13.6 A. states that Firm Transmission Service may be curtailed due to Emergencies or *Force Majeure*, to maintain reliable operations, to protect facilities and to comply with NERC standards. The Transmission Provider cannot curtail Firm transactions due to the availability of economical purchases to serve Native Load customers.
- Section 13.6 B states that curtailments will be proportionally allocated among Network Customers and Transmission Customers taking Firm Point-to-Point Transmission Service on a basis comparable to the curtailment of service to TVA's Native Load Customer. There is no priority given to Native Load versus Firm Point-to-Point customers. Non-firm is curtailed before firm.

PacifiCorp OATT

- Section 13.6 states that in the event a curtailment is required to maintain reliable operation of the system the Transmission Provider will curtail transactions on a non-discriminatory basis. The Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-to-Point Transmission service on a basis comparable to the curtailment of service to the Transmission

⁸ Décision 2002-95, p. 343, 1er par.

⁹ NEG #1B.

¹⁰ NEG #1A.

Provider's Native Load Customers. Again no preference is given to Native Load, whether due to the availability of economic transactions or reliability.

Other Considerations

- NEG believes that the Distributor supply requirements in relation with the Heritage Pool 165 TWh/yr and its 10-yr Supply Plan do not justify the allocation of such priority right to the Distributor. Indeed, the Distributor own forecasts present appropriate level of supply until at least 2006. These numbers are indicative and could easily be revised in the years to come.
- Furthermore, the Distributor does not hold a FERC Market Based Wholesale license (its affiliate HQUS does), thus not authorized to transact in the U.S. Consequently, any RFP to be launched by the Distributor should request from potential suppliers to incorporate in their bid a transmission components with surrounding markets if necessary, which was not the case with the Distributor recent RFP requesting supply exclusively from Quebec sources.
- Such priority right could also have significant impact on investments in generation and transmission upgrades in surrounding markets with Quebec. If market participants cannot secure proper firm transmission services, it would create an additional risk reflected in the financing of any such project.
- Consequently, such priority right would create more inconvenient than advantages for the Distributor. If such measure becomes necessary in the future, a specific motion could be presented at the Régie at appropriate time.
- Thus, NEG advises the Régie to treat the Distributor on the same level playing field as any other firm customers and not authorize any priority rights whatsoever for economic reasons, only for reliability ones under NERC established parameters.
- We would also advise that further studies be performed to assure the compatibility of this Section with HQUS requirements to maintain its U.S. market-based wholesale license.

IV. GENERAL COMMENT

Treatment of isolated generation / Appendix C – Section 3

- Like many other interveners, in order to limit the cost of their participations, NEG did not attend all of the days of hearing, and has taken for granted that the Régie would be called to rule on the text submitted by HQT. NEG missed the additional modifications proposed in Exhibit HQT-11 doc. 2.1.
- NEG, in the following paragraphs does not intent to ask for the revision of the Régie's decision to adopt "as is" the modified text of this Section, but simply wishes to put itself on record and to alert the Régie on the impact of such modification in the case of future hearings.

- Allowing HQT to act at its own discretion, resulted in providing HQT with an unfair advantage to their marketing affiliate and against the general concept of a single transmission facility zone with in Quebec, with no congestion management system implemented for the moment.
- As it is the case in other jurisdiction, fair parameters are determined by regulators under which an isolated generator receives a compensation to provide such service, which should cover replacement power (based on market clearing price) and associated losses, as well as the material costs to switch the equipment. Generator does not recuperate opportunity costs.
- It would be almost impossible to determine what level of compensation HQ-Generation would request for such usage, especially if it includes a lost opportunity component to be paid, which may fluctuate at the HQ-Generations desire from time-to-time, and certainly always outside price differential between 2 surrounding markets.
- Considering the importance of the Beauharnois interconnection, NEG believes it is equivalent to not provide a fair access to the Ontario market to other customers than HQ-TE marketing affiliate.
- Furthermore, it is our understanding that the associated interconnections are HQ-TE property and already included in their rate. Thus, no special rate should be charged to a specific customer for the use of a specific interconnection. In other jurisdiction with no congestion management system in place, these costs are socialized via uplifts payments charged to the entire customers base.
- In conclusion on this comment, NEG advises the Régie that in the future it will challenge, at the HQT tariff hearings, this discretionary power given to HQ-Generation at the Appendix C.
- **Thus, NEG asks the Régie to:**
- **Refuse the amendments proposed by HQT at section 38.9 and at section 13.2.**

V. COSTS OF NEG FOR THIS HEARING

- NEG asks the Régie to order HQT to reimburse NEG's reasonable fees and expenses incurred in the present hearing.

RESPECTFULLY SUBMITTED.

Montreal, November 25th, 2002

Me Marc Laurin
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PG&E NATIONAL ENERGY GROUP, INC.
(NEG)