

**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")**

**Intervenor**

## **NEG'S WRITTEN ARGUMENTATION**

### **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 final written argumentation on TransÉnergie's Amended Application of August 15, 2000. TransÉnergie is a division of Hydro-Québec (TransÉnergie being hereinafter referred to as "HQ-TE").

### **II. CONTEXT**

#### **A. NEG's interest in the present proceeding**

- In the present proceeding, NEG is primarily interested in facilitating a more active participation by the various parties that constitute the Quebec wholesale power market<sup>1</sup>. Further, given that the New England, New York, PJM, Ontario and Quebec markets should ultimately be considered as a single region for power transactions and given that Hydro-Quebec is free to transact business in that region (in the form of sales and marketing of generation and wholesale power supplies) it is imperative that the Régie

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<sup>1</sup> NEG 3, page 16.

requests that HQ-TE eliminate the barriers to competition that exist for non-affiliated power marketers in Quebec's market.

- Simply put, NEG argues that there should be 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.
- Given that NEG acquired the *New England Electric System* power generation business in 1998 and given that a significant portion of NEG's operating plant portfolio is located in New England<sup>2</sup>, NEG has to protect its investment and ongoing commercial interests in the Northeast. NEG seeks to accomplish this task by increasing its level of transactions with surrounding markets. This approach will allow NEG to properly manage the risks inherent with its investment in competitive energy markets. HQ-US has a similar objective for its business interests in the United States<sup>3</sup>.
- NEG's real goal is to move the industry towards a common wholesale market protocol within the Northeast United States and Eastern Canada. NEG believes that such an alignment will improve market efficiency and will minimize the costs passed on to consumers<sup>4</sup>.
- In the present proceeding, NEG desires to provide the Régie with the point of view of a U.S. marketer of energy. NEG's intent is not to present expert testimony but rather to present the facts and the industry practices which exist in North America (and more precisely in the Northeast United States) as experienced by the NEG staff who work in day-to-day commercial operations.
- Since HQ-US is a valued trading partner, NEG wishes to increase business opportunities between the two companies in both the United States and Canada. NEG's intervention in this proceeding is not meant to impair HQ's commercial presence in the United States<sup>5</sup>.
- NEG respectfully asks the Régie to rectify the inequities that exist in the application of the HQ Open Access Transmission Tariff and to ensure that market participants in Quebec receive comparable treatment to the treatment that Hydro-Quebec Energy Services, Inc. ("HQ-US") receives from Transmission Providers in the U.S.<sup>6</sup>.

## **B. U.S. Regulatory Environment**

- Within the filings it has made to the Federal Energy Regulatory Commission ("FERC") and in its testimony at the present proceeding, HQ has made representations that HQ-

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<sup>2</sup> NEG-3.

<sup>3</sup> NEG-5, page 6.

<sup>4</sup> NEG-3, page 17.

<sup>5</sup> NEG-3, page 18.

<sup>6</sup> NEG-9, page 1.

TE functions much like an independent system operator ("ISO"). In its brief, NEG stated its view that HQ's participation in the regional transmission organization ("RTO") process would stimulate competition and would facilitate interested parties access to the energy market. In its testimony, NEG reviewed many of the principles and functions associated with FERC Order Nos. 888 (Open Access Transmission and ISO development), 889 (Open Access Same-Time Information Systems (OASIS) and Standards of Conduct) and 2000 (RTO Development in the United States)<sup>7</sup>.

- Those principles and functions can briefly be described as follows: Order 888 established the ISO as the entity responsible for (i) safe and reliable grid operations, and (ii) wholesale market operations. Order 888 also created the Open Access Transmission Tariff ("OATT") and required that jurisdictional transmission owners adopt OATT for their wholesale transactions. Listed below are the highlights of each of these Orders as well as the principle behind the concept of "functional unbundling":

Principal Elements of Order 888:

- Introduction of the Open Access Transmission Tariff (OATT)<sup>9</sup>;
- A single tariff that offers network (load-based) and point-to-point (contract-based) transmission services;
- Contains minimum terms and conditions for the provision of non-discriminatory services;
- Requires that utilities take transmission services (including ancillary services) for their own wholesale sales and purchases of electric energy under OATT.

Functional Unbundling<sup>10</sup>:

- Public utilities must take transmission services for all new wholesale sales and purchases of energy under the same tariff as other utilities;
- Public utilities must state separate rates for wholesale generation, transmission and ancillary services;
- When buying or selling power, public utilities must rely on the same electronic information network that their transmission customers rely on.

ISO Principles - Order 888:

- The creation of a fair, non-discriminatory governance structure;
- No financial interest of ISO and employees in the economic performance of any market participant;
- Non-pancaked rates under a single, unbundled, grid-wide tariff;
- Primary responsibility for ensuring the short-term reliability of grid operations;

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<sup>7</sup> NEG-9, and Testimony of Jack Hawks, June 1, 2001. Vol. 30, page 41.

<sup>8</sup> Testimony of Jack Hawk, June 1, 2001, pages 22 to 36.

<sup>9</sup> NEG-9, page 3.

<sup>10</sup> NEG-9, Page 4.

- Control over the operation of interconnected transmission facilities within the ISO's region;
- Ability to identify and effectively relieve transmission constraints;
- Appropriate incentives for the efficient management and procurement of needed services;
- Pricing policies which serve to promote efficient investments in generation and transmission;
- Provides an electronic information system (OASIS) to relay transmission system information;
- The development of mechanisms which serve to co-ordinate neighbouring control areas;
- Establishes an ADR process to resolve disputes.

Principal Elements of Order 889:

- FERC Order 889<sup>11</sup> established protocols for the disclosure of information by transmission-owning utilities, created the OASIS platform and established various standards of conduct. The standards of conduct have two key elements: (i) the separation of transmission operations/reliability functions from market/merchant functions; and (ii) preventing system employees from providing merchant and affiliate employees with information not available to all customers at the same time through OASIS.

Principal Elements of Order 2000:

- FERC Order 2000 was issued because Order 888 did not go far enough to address transmission market power concerns. It has led to the RTO formation which is underway today in the United States. Order 2000 established a framework for RTO characteristics and functions (the acronym "RTO" became the generic term for both ISOs (Not-for-Profit) and "Transcos" / "Gridcos" (For-Profit)).

RTO Minimum Characteristics:<sup>12</sup>

1. The independence of RTO board of directors, officers and employees from market participants;
  2. Appropriate scope and regional configuration;
  3. Operational authority of all the transmission facilities under the RTO's control;
  4. Exclusive authority to maintain short-term reliability.
- NEG asserts that HQ-TE has either dismissed out-of-hand or has largely ignored NEG's testimony surrounding these regulatory issues. As such, NEG reasserts that, in regards to transmission access, HQ-TE has fallen short. Even if access was made easier for non-HQ-affiliated market participants, the current transmission rates in Quebec are prohibitively expensive, and as such, they: (i) mitigate against open access for all parties, (ii) create inefficiencies in the use of the system, and (iii) reduce third-party investment

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<sup>11</sup> Testimony of Steve L. McDonald, June 1, 2001, Vol. 30, pages 36 to 66.

<sup>12</sup> NEG-9, page 10.

in the use of the transmission system. Further, NEG asserts that HQ-TE falls short in the dissemination of necessary information to transmission system users.

*« TransÉnergie ne coordonne pas les calculs ni les résultats et ses capacités de transfert avec les autres réseaux »<sup>13</sup>*

- It is reasonable to conclude that in regards to technical, operational and reliability requirements, HQ-TE can perform like an ISO/RTO. However, as concerns other principles that are more closely attuned to competitive wholesale market operations, NEG maintains that HQ-TE falls woefully short and needs to make significant changes :

*"In summary on the RTO functions, we believe that HQ, TransÉnergie complies fully with two of the eight minimum functions, it complies in part with two other functions, it can comply in the future with two additional ones; and for the moment, it cannot or does not comply with the regional coordination or the market monitoring functions.*

*I think the conclusion that one should draw at this point is that HQ has the potential to function much like an RTO in the future, but that at this point in time, it doesn't do so at this point in time."<sup>14</sup>*

- In its argument on the Quebec Context<sup>15</sup>, HQ emphasized the "very special circumstances of the Quebec market for electricity" including the fact that Quebec's electricity production is predominantly hydroelectric, that the sources of hydroelectricity are located significant distances from the consuming centers in the south and that this creates the need for a larger, more costly transmission infrastructure. On pages 9 and 10 of their argument, HQ also noted that no retail deregulation exists in Quebec and that HQ-TE does not operate within the context of an energy commodity market or "purchasing pool. "
- Further, HQ-TE argued that it was created based on a "Transco" model in terms of RTO development, and as such, it was not *« ...approprié ou utile de comparer sa manière d'opérer avec celles des entités qui gèrent également des marchés de l'électricité tel le Independent Market Operator ("IMO") de l'Ontario ou le Independent System Operator ("ISO") de New York... »*<sup>16</sup>. In HQ-TE's view, this statement implies that HQ-TE should not be required to adhere to the principles of FERC Orders 888, 889 and 2000 in Quebec even though HQ-US enjoys the benefits of these same principles when it is convenient to do so and in the process makes hundreds of millions of dollars in the United States (often at the expense of U.S. based competitors).

<sup>13</sup> HQT-13, Document 13, page 3.

<sup>14</sup> Testimony of Jack Hawks, June 1, 2001, Vol. 30, page 35 (lines 22 to 28) and page 36 (lines 1 to 4)

<sup>15</sup> Argumentation of Hydro-Québec, August 9, 2001, pages 7 to 10.

<sup>16</sup> Id., page 10.

- NEG contests the basic inequity that exists between HQ-TE/HQ-US and U.S.-based firms attempting to engage in similar business opportunities in Quebec. Further, NEG urges the Régie to acknowledge this inequity and to move towards the creation of a more symmetrical system between the competitive wholesale markets in the Northeast United States and the non-competitive market that exists in Quebec.
- NEG submits that HQ-TE errs in two ways in its assessment that it is closer to being a Transco and that, as such, it should not be compared to other entities that manage electricity markets<sup>17</sup>. First, a Transco, as that term is now commonly understood in the United States, is a separate for-profit corporate entity with an independent board of directors that has assumed ownership and control of transmission facilities. This is not the case with HQ-TE. Second, as an RTO, a Transco assumes many responsibilities associated with market operations well beyond its grid and reliability management functions. Since the Quebec wholesale market does not have formal energy, capacity, ancillary services, products and markets and since there is no real-time balancing market, HQ-TE cannot yet ascribe to itself the label of being a Transco, especially in the RTO context. The reason it is not yet appropriate to compare HQ-TE with other RTO-type entities is not because HQ-TE considers itself as a Transco or because HQ-TE considers the characteristics of the Quebec market to be so distinct as to forestall the creation of competitive markets. Rather, the reason why it is not yet appropriate to compare HQ-TE with other RTO-type entities is because a fully competitive market does not yet exist in Quebec. As such, HQ-TE does not comport with either the characteristics or functions of an RTO. It is this aspect of the regulatory model that NEG requests the Régie to address in its deliberations<sup>18</sup>.

### C. Quebec Market

- NEG supports the following statement made by HQ and submits that the statement should guide the Régie in the preparation of its decision :

*« Hydro-Québec est d'avis que la réglementation économique de ses activités de transport d'électricité doit refléter les nouvelles réalités du contexte énergétique nord-américain marquées par l'ouverture des marchés, la déréglementation de la production de même que l'accès libre et non discriminatoire au transit d'électricité, tout en reconnaissant les particularités du secteur électrique québécois et la spécificité d'Hydro-Québec<sup>19</sup> »*
- NEG also acknowledges the Régie's authority to fix and modify rates and other terms and conditions of a transmission provider such as HQ-TE<sup>20</sup>.
- By the adoption of HQ's *Bylaw 659*, the Quebec Government was *de facto* enforcing the FERC *pro forma* tariff<sup>21</sup>. HQ made a clear commitment to comply to FERC requirements

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<sup>17</sup> HQT-13, Document 13, page 3.

<sup>18</sup> Testimony of Jack Hawks, June 1, 2001, pages 38 and 41.

<sup>19</sup> Argumentation of Hydro-Québec, August 9, 2001, page 3.

<sup>20</sup> Section 48 of the Act respecting the Régie de l'énergie 2000, chap. 22.

<sup>21</sup> 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.

and to offer other market participants reciprocity to its transmission network and wholesale market. Despite the fact that we are in the early stages of electricity deregulation there are already industry precedents and standards which should apply to HQ-TE's activities.

- NEG strongly believes that not only would it be, as stated by HQ<sup>22</sup>, "preferable" that the terms and conditions of HQ-TE transmission services respect FERC reciprocity requirements, NEG believes that reciprocity is essential, as clearly edicted by FERC, if HQ-US is to keep its U.S. wholesale license<sup>23</sup>.
- As it made clear during its presentation<sup>24</sup>, NEG is concerned with the way its requests have been treated so far by HQ-TE and NEG is also concerned that the requirement of reciprocity is not being respected. NEG has demonstrated that HQ-TE has barely implemented the minimum structure required by FERC<sup>25</sup>.
- NEG disagrees with HQ's statement that since HQ-TE's structure is based on a "Transco" model it is not appropriate to compare its operations with surrounding ISOs or IMOs<sup>6</sup>. NEG believes it would be a grave mistake not to adopt the same standards and NEG believes that the objective should be to facilitate the synergy between transmission providers in order to increase grid usage and electricity movement at the lowest cost possible. If, in theory, the Transco model is compatible with the implementation of RTOs, it is due to the fact that the Transco model is in many respects similar to an ISO structure.
- Further, NEG supports the Régie's decision not to reconsider HQ's participation in the opening of the U.S. energy markets<sup>27</sup>. However, NEG desires to obtain services comparable to the services HQ-US enjoys in the U.S. 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 requirement, HQ-US's license could be challenged one day.
- Based on its experience trading electricity on most of the power markets surrounding Quebec, NEG spoke about some of the obstacles it has encountered so far in its day-to-day experiences using the HQ-TE network. In order to illustrate what constitutes an efficient market, NEG compared Quebec's market characteristics with the characteristics which exist in PJM, NY, NE and Ontario in terms of competition, liquidity, rule clarity, non-discrimination, system information and stakeholders output.

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<sup>22</sup> Argumentation of Hydro-Québec, August 9, 2001.

<sup>23</sup> 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 & 7.

<sup>24</sup> NEG-9, pages 56 & ff.

<sup>25</sup> Testimony of Richard Bordeleau, June 1, 2001 pages 67 & ff.

<sup>26</sup> Argumentation of Hydro-Québec, August 9, 2001, page 10.

<sup>27</sup> Decision D-2000-102, June 2, 2000, page 26.

"...Quebec, as it currently stands, doesn't have all the characteristics of an efficient market, especially as compared to the surrounding areas in which parties like ourselves, HQ (US) are able to trade and do a significant amount of volume and a significant amount of business."<sup>28</sup>

### III. NEG'S ARGUMENTATION

#### A. CONTEXT (THEME 1)

##### **Functional Separation (1.2)**

- The functional unbundling of HQ's transmission function from its merchant function might respect the minimum standard set out by FERC but there is sufficient evidence of an appearance of a conflict of interest to cause concern to NEG. For example:
  - There is no forum for a stakeholder to participate in the evolution of HQ-TE's activities<sup>29</sup>;
  - HQ's CEO sits on the advisory committee of HQ-TE and is a full member of HQ's managerial committee;
  - HQ, in its capacity as a generator, intervenes in the operation of HQ-TE:

« Évidemment, c'est lui (**le producteur**) qui fait l'arbitrage économique, ce n'est pas plus compliqué que ça, alors, lui, il a une liste de moyens, il y a de centrales thermiques, il y a des contrats, il y a un tas de moyens qu'il donne à TransEnergie, il dit: Voici, si jamais tu as un besoin quelconque pour maintenir tes réserves, ta fiabilité, ta sécurité de transport, tu peux couper telle transaction, tu peux partir telle centrale, et ainsi de suite, il nous la liste. »<sup>30</sup>

- In answer to Mr. Regis' statement that HQ-TE is not involved in any way in the commerce of electricity<sup>31</sup>, NEG presented evidence of HQ-TE's involvement in the negotiation of conditions of emergency energy exchanges with surrounding power pools<sup>32</sup>. As another example, in a letter dated May 1, 2001, HQ-TE acted on behalf of the marketing unit of HQ to declare a price for emergency energy that HQ would seek to impose on the New England Power Pool participants "unless other commercial arrangements are established". This letter came forth at the same time that New England Utilities (" NEU ") was negotiating a pricing proposal for emergency energy with HQ-TE's marketing affiliate. This letter underscored the fact that HQ remains a vertically integrated monopoly. Both of HQ's affiliates disclaimed responsibility for

<sup>28</sup> Testimony of Kristin Kraiza, June 1, 2001, Vol. 30, page 66 (lines 3 to 8).

<sup>29</sup> Testimony of Richard Bordeleau, June 1, 2001, Vol. 30, pages 67 & ff; cross-examination of Denis Gagnon, June 14, 2001, Vol 31, pages 178 to 197.

<sup>30</sup> Testimony of Francois Roberge, May 22, 2001, Vol. 23, page 92 (lines 1 to 10).

<sup>31</sup> Testimony of Jacques Regis, April 9, 2001, Vol. 5, page 213.

<sup>32</sup> NEG-5, Letter from Francois Roberge of TransEnergie (division H-Q) to William W. Berry of ISO-New England, re: Emergency Energy, dated May 1, 2001; Letter from Daniel Garant of Hydro-Québec to Bruce W. McKinnon of Massachusetts Municipal Wholesale Electric, re: Emergency Energy Pricing dated May 18, 2001.

negotiating a reasonable price for emergency energy and both affiliates insisted that the pricing had to be as stated in their respective letter. NEG believes that HQ-TE should have limited its role to transmission and reliability related matters and that its failure to do so negates the statement referred to above which was made by Mr. Regis.

*"Where we have a problem is where the affiliate of TransÉnergie, which is the production group, which should not know what are the negotiations for emergency purchase, the transmission provider is in charge of providing the emergency, they can buy from New Brunswick, they can buy it from Ontario, they can buy it from Alcan, they can buy it from McLaren. Why does the production group is aware of those negotiations?"<sup>33</sup>*

- NEG is also concerned with the potential intervention of HQ's merchant function with the daily activities of HQ-TE.

*"As far as governance is concerned, here the FERC Order made a distinction between the independence of those in the ISO being independent from market participants. And, unfortunately and obviously, HQ would fall short on this particular principle because it's a state own monopoly and for the time being it cannot be independent of other market participants such as HQ Generation, HQ Marketing.*

(..)

*No financial interest of the ISO and employees in the economic performance of any market participant. Again, it's premature to make a final judgment here because HQ's structure does not permit it to comport or conform with this particular principle.<sup>34</sup>*

- With such a thin separation between the Canadian and American activities of HQ-Marketing there exists a real possibility that HQ-US will receive preferred treatment and benefit from privileged information to the detriment of other market participants :

*"The concern here is almost analogous to a person wearing a couple of different hats. H.Q. – U.S. obviously is competing in the U.S. marketplace, let's say against us and against others. And if they are going to be working as closely as this letter would indicate with the Canadian generating company, they are going to have access to information that the rest of us don't.*

*The fact is that Hydro-Quebec is, the Province, the generator, is a very large supplier to both New York and New England, areas that we trade and many others trade. And if H.Q. – U.S. is going to have information that the rest of us don't as far as how much generation, how things are going in Quebec, how much may be getting exported over the ties, they are going to have an eighth knowledge that we don't within the States, within the marketing regions that we are trading, and that gives them a very unfair competitive advantage"<sup>35</sup>*

<sup>33</sup> Testimony of Richard Bordeleau, June 14, 2001, Vol. 31, page 57 (lines 9 to 17).

<sup>34</sup> Testimony of Jack Hawks, June 1, 2001, Vol. 30, page 27 (lines 5 to 19).

<sup>35</sup> Testimony of Kristin Kraiza, June 14, 2001, (Vol. 31, page 64 (lines 12 to 28) and page 65 (lines 1 to 3)).

- Based on its own experience in dealing with a very strict Code of Conduct which applies to its regulated affiliate in California<sup>36</sup>, NEG would certainly not qualify the functional separation of HQ as being "extreme", as HQ has stated in its argumentation<sup>37</sup>.
- As made clear by NEG during its presentation<sup>38</sup>, the FERC wholesale license that was obtained on November 12, 1997 remains subject to several conditions, which include:
  - No generation market power;
  - No transmission market power;
  - No barriers to entry;
  - Comparable treatment (i.e. same level playing field);
  - Adherence to a strict code of conduct;
  - HQ-US must file a market analysis every 3 years<sup>39</sup>.

*« Hydro-Québec (US), le "marketer" américain ne doit pas avoir de "generation market power" pas plus d'avoir de "transmission market power", c'est de la dominance de marché à la fois dans la génération ou dans le transport. Hydro-Québec (US) ne doit pas causer de barrières à l'entrée, Hydro-Québec (US), dans leur "filing" au FERC font des représentations que leur "transmission provider", que TransÉnergie va donner un traitement comparable Et puis ce qu'on pourrait qualifier ou ce que d'autres joueurs ont qualifié, ce qui est le "same level playing field" »*

(..)

*NEG-22 : Extrait de HQT-10 document 4, témoignage de monsieur Ren Orans, page 4.  
M. RICHARD BORDELAU::*

*R. Je lis :*

*"The reciprocity clause requires that in order for a supplier to receive comparable transmission access to U.S. markets, that supplier's transmission affiliate must provide comparable access to its own market."*

*Ce qu'on veut dire par là, c'est que les règles qui s'appliquent aux États-Unis pour HQ US, l'esprit de ces règles-là devraient s'appliquer aussi au Québec et puis que les business practice" devraient aussi s'appliquer. »<sup>40</sup>*

- Any stakeholder could, at any time, file a motion if any of these requirements is not being met. Over the last two years, NEG witnessed an increased trend to consider regulatory measures in the U.S. against HQ<sup>41</sup>. Furthermore, HQ-TE is certainly aware of

<sup>36</sup> Testimony of Steve L. McDonald of May 3, 2001, Vol. 17, pages 209 to 217.

<sup>37</sup> Argumentation of Hydro-Québec, August 9, 2001, page 36.

<sup>38</sup> NEG-9.

<sup>39</sup> SE-STOP-32, doc. 2.

<sup>40</sup> Testimony of Richard Bordeleau, June 1, 2001, Vol. 30, page 82 (lines 3 to 13) and page 85 (lines 1 to 12).

<sup>41</sup> NEG-9, pages 45 to 52.

the motion Enron filed with FERC, such motion which was subsequently supported by *Sempra, Southern and Mouvement au Courant*.<sup>42</sup>

*" Enron Power Marketing Inc. and Coral Power L.L.C. have intervened at FERC in HQ-US's application for market based rates for sales in the U.S. They have indicated that transmission access " through service " is priced to discriminate against HQ's competitors. "*

- Concerning the Complaint Procedure that was approved by the Régie in its decision D-98-25, « *Approbation des procédures d'examen des plaintes établies par les distributeurs d'électricité et de gaz naturel (Art. 87, L.R.E.)* »<sup>43</sup>, NEG submits that the 30-day prescription period is far too limited as compared to industry standards and is in contradiction with section 99 (2) of the *Act Respecting the Régie de l'Énergie*. NEG considers the relevant provision of the OATT to be more in line with industry standards<sup>44</sup>. Further, the aforementioned decision concerns transmissions related to distribution, this is to say transmission on distribution lines at voltages below 44 KV.
- Furthermore, NEG brought certain irregularities in the complaint procedure to the attention of the Régie.
  1. HQ-TE claims to have sent NEG a letter explaining the complaint procedure on August 27, 1998<sup>45</sup> even though NEG signed a service agreement and became a client of HQ-TE only on November 16, 1998. Furthermore, the letter was addressed to Mr. Wolfgang Mueller, an employee of NEG's Accounting Department and Mr. Mueller was not the appropriate employee to whom the letter should have been addressed.
  2. No transmission has been made in 2000 as is required by the Régie.<sup>46</sup>
  3. Further, no English translation of such document was available on the web-sites of either HQ-TE or the Régie, despite the fact that all of HQ-TE's wholesale transmission customers, besides HQ-Marketing and Energie MacLaren, are from English speaking regions<sup>47</sup>.
  4. NRG Power Marketing Inc., represented by NEG in the present case<sup>48</sup>, has only recently been informed of the existence of the complaint procedure. Moreover, during the November 2000 event, the HQ-TE representative did not explain to NRG personnel many of the steps which apply when one wants to present a formal complaint<sup>49</sup>.
  5. As approved by *Québec Bylaw 659*, the applicable legislation governing the commercial relationship with NEG remains the OATT. This has not been modified by the Régie as

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<sup>42</sup> NB-Power-1, page 9, question 29.

<sup>43</sup> Decision D-98-25, appendix J.; R-3392-97.

<sup>44</sup> NEG-9.

<sup>45</sup> NEG-28, page 2, sections 1.1 and 1.2.

<sup>46</sup> Cross-examination of Mr. Denis Gagnon, June 14, 2001, Vol. 31, page 202.

<sup>47</sup> HQT-4, document 1.1.4.

<sup>48</sup> NEG-8.

<sup>49</sup> NEG-28.

of yet. Section 12 of the OATT remains clear and does not specify any maximum delay in which a customer must file a complaint. Only Section 99 (2) of *An Act Respecting the Régie de l'Énergie* allows the Régie to refuse or to cease to examine a complaint if more than one year has elapsed since the time the complainant became aware of the facts on which his complaint is based.

- Considering all of the aforementioned flaws in the management of the complaint process, NEG submits that Section 12 of the OATT is still in force and that the Régie has the authority to receive complaints from transmission customers<sup>50</sup>. As such, NEG submits to the Régie that Section 12.5 of the OATT must remain in force.
- Had HQ-TE been in compliance with industry standards, industry practices and FERC requirements and if HQ-TE had a high rate of satisfaction among its customer base, the actual process would have been easier, faster and would have involved less participation from the various parties involved. Despite HQ-TE's statement, NEG has been able to demonstrate at least the appearance of non-compliance<sup>51</sup>.

## **B. REQUIRED REVENUES (THEME 4)**

### ***Treatment of Generation Related Transmission Assets***

- As shown by NEG, the costs of radial interconnection lines which were built to reach Northern Quebec generating stations should have been classified as generation expenses for rate design purposes<sup>52</sup>.
- Any jurist, and in particular a Quebec jurist, would understand that the Régie is governed and its powers are contained and restricted by the *Act Respecting the Régie de l'Énergie* and, more specifically, in the context of generation related transmission assets, Section 2 (wherein "electric power transmission system" is defined) and Section 49 of the aforementioned Act.
- However, it is equally important for any non-jurist who will read the decision of the Régie in the present proceeding to understand that the Régie does not have the power to modify the definition in question.
- NEG's goal was to present the U.S. perspective on the treatment of such assets and NEG expected that the Régie would acknowledge that Quebec's allocation of generation related transmission assets differs to the allocation such assets are given within the U.S. markets. NEG would like to remind the Régie of the evidence to this effect that was presented at the hearing:

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<sup>50</sup> Testimony of Jacques Regis, April 10, 2001, Vol. 6, pages 234 and 235.

<sup>51</sup> NEG-9

<sup>52</sup> NEG-4

" Q. And in this amended section 2, "electric power transmission system " is defined as follows,

*It means a network of installations for the transmission of electric power, including step-up transformers located at production sites, transmission lines at voltages of 44 kv or higher, transmission and transformation substations, and any other connecting installation between production sites and the distribution system.*

would you agree with me that such a definition of electric power transmission system in the Act makes it inevitable that the interconnection facilities would form part of the electric power transmission system?

A. No, I don't think I would agree with that, the distinction being, that definition is very similar to the FERC definition for transmission accounts, and that is the way, the way I looked at that, that was an accounting definition, I don't think that anyone has proposed that a radial transmission line is anything other than a transmission plant for accounting purposes.

(...)

*but we reclassified, for rate-making purposes, transmission plant that was related to generation functions. We did not try to change the accounting definition of the transmission plant, simply to take it and put it with the function that we felt it was appropriate."<sup>53</sup>*

- NEG acknowledges the importance of *Bill 116*<sup>54</sup>, particularly as it concerns the definition of an "electric power transmission system" and the modification it makes to the Régie's authority in the context of approvals or modifications to a transmission tariff. However, NEG is of the belief that HQ is taking a lot of latitude in its interpretation of the applicable legislation. The Régie should reach its own proper conclusions.
- Further, HQ's arguments as to the importance of maintaining the integrality of the transmission network is based on several assumptions on the future of radial lines and those assumptions remain highly hypothetical<sup>55</sup>.

<sup>53</sup> Testimony of Steve L. McDonald, May 3, 2001, Vol. 17, page 225 (lines 26-27), page 226 (lines 1 to 24) and page 277 (lines 2 to 7)..

<sup>54</sup> Section 2 of the Act respecting the Régie de l'énergie 2000, chap. 22.

<sup>55</sup> Argumentation of Hydro-Québec, August 9, 2001, page 129.

**C. TRANSMISSION TARIFF (THEME 5)*****Transmission Tariff Methodology (5.1)***

- NEG demonstrated that HQ-TE should use a consistent method in the calculation of firm and non-firm point-to-point transmission rates<sup>56</sup>. In its new tariff structure, HQ-TE applied the “one coincident peak” method in order to establish its annual tariff but it used the “twelve coincident peak” method in order to establish its monthly, weekly and daily rates. This tariff structure generates the lowest possible rate for the yearly tariff, where HQ-Production has been the most active and it generates the highest possible value for the remaining firm and non-firm tariffs where other market participants would be most active.

***Rates and allocation (5.2)***

- NEG demonstrated that services are economically infeasible due to the excessive charges for such services (CA\$17/MWh compared with BC Hydro at CA\$6.90/MWh)<sup>57</sup>. Additionally, an increase of 5.8% has been requested for 2001. The current and the proposed Rate Structure prevents economic trading and is not comparable to transmission pricing in other regions.
- HQ's argument that the tariff remains comparable to the tariffs in place in the State of New York is incorrect. In determining the location to build its generation station, a generating station developer in N.Y. will consider congestion costs and their effect on the locational marginal price to be paid. They will have an incentive to choose a location which reduces the interconnection and transmission costs. The NYISO also gives compensation, through transmission congestion contracts, when a facility increases the capability of the transmission system<sup>58</sup>.
- Further, HQ's argument that it does not provide any advantage to HQ-Production due to the fact that any other developer would benefit from the same policy<sup>59</sup> is not very convincing. It is not very convincing due to the limited potential for real competition that exists for generation development inside of Quebec. NEG would be pleased to benefit from such a policy if the generation of electricity was truly deregulated and if they were afforded the opportunity to build hydro stations the size of the ones currently owned by HQ in Quebec.

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<sup>56</sup> NEG-9.

<sup>57</sup> Id. page 20

<sup>58</sup> NEG-9, page 10.

<sup>59</sup> Argumentation of Hydro-Québec, August 9, page 156.

**D. Commercialization (THEME 6)*****Commercialization of the transmission capacity (6.1)***

- It is NEG's desire to become a more active participant in the Quebec energy market. However, since NEG became a client of HQ-TE, its efforts to carry out desired transactions have not been very successful and this is mostly due to HQ-TE's excessively high rate structure and the unavailability of required services.
- With the size of its activities in the U.S. Northeast<sup>60</sup>, HQ-TE represents a very strategic grid on which NEG wishes to increase its trading initiative while it protects its investment interests in its portfolio of assets.
- If HQ-TE's claims were founded, the participation of the seventeen customers, other than HQ, would be higher and would not be the marginal and almost non-existent participation that exists at present <sup>61</sup>. NEG's share would also be representative of the size of its activities in surrounding markets.

*"I think that the first point is that to buy transmission, you need to have access to a wholesale market, which we think that right now, in Quebec, it is like quasi non-existent, first, the wholesale market, based on the fact that there is not competition. The second point is, the rates that everybody has been describing as being too high preclude transactions to happen, not only if the transmission was available, first of all, the transmission on long term, if you want to structure a transaction long term, you won't be able to do it, it is only short-term like windows that are available. And if you want to do that, the rates are too high, so it precludes to do any transactions."*<sup>62</sup>

- Following some questions from the Régie, HQ introduced the concept of "HQT", i.e. a single reception point applicable for both import and export activities with surrounding networks<sup>63</sup>. NEG testified that HQ-TE should recognize the "HQT" concept and allow wheel-in transactions on the same conditions as the transactions carried out at ISO-New England :

*"...Hydro-Quebec is like using a single delivery point, we're talking about a pool earlier, different resources (sic) are considered as being one resource (sic). In my mind, it looked like ISO New England where we have different ressources that are at a single nud when you're buying transmission in New England which will be ISO New England..*

*So, even if some people think that Hydro-Québec does not consider itself as a pool, it looks like it and the way that they treat themselves, not designating units specifically."*<sup>64</sup>

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<sup>60</sup> NEG-5, pages 1 and 2.

<sup>61</sup> NEG-5, pages 5 and 7.

<sup>62</sup> Testimony of Richard Bordeleau, June 14, 2001, Vol. 31, page 21 (lines 2 to 15).

<sup>63</sup> HQT-13, Doc. 1. pages 22 and 23.

<sup>64</sup> Testimony of Richard Bordeleau, June 14, 2001, Vol. 31, page 92 (lines 7 to 18).

- Under a single delivery point, any customer should be considered to deliver or receive power at the HQT point where the delivery/reception occurs at any busbar inside the Province. Further, any entity buying at any HQ border (Ontario, New York, New England, New Brunswick, Labrador) should receive credit for such purchases in its internal account without having to purchase point-to-point services (as is the case for HQ-Distribution and HQ-Generation). By doing so, the Régie would guarantee that all participants are treated on the "same level playing field". Similarly, transactions within the province should be considered delivered at HQT without the need to make a transmission request. These measures would bring the Quebec market closer to the Northeast markets such as ISO-NE (with the NEPOOL PTF Seller's Choice product) and the P PJM Market (with the PJM WEST HUB product).
- NEG also demonstrated that the transmission path with New England (HQT-NE) was overused by HQ to the detriment of other customers, especially those customers owning an entitlement on the U.S. side of the Direct Current line<sup>65</sup>.
- With the marginal revenues it obtains from short term services (0.4% of its expected revenues)<sup>66</sup>, HQ-TE has plenty of margin to offer lower rates to the rest of its customer base in order to stimulate true competition on its grids.
- It remains essential for NEG to assure that HQ-TE does not provide an affiliated company preferential treatment with respect to transmission services which would confer an unfair advantage over other competitors:
 

*« Hydro-Québec a pour politique de ne pas accorder à ses sociétés affiliées, dans leurs activités commerciales de vente en gros d'électricité, un traitement préférentiel quant aux services de transport qui aurait pour effet de leur conférer un avantage concurrentiel injuste par rapport à leur concurrents. »<sup>67</sup>*
- NEG would also like to remind the Régie that HQ-TE has an obligation to keep a detailed record of any use of its discretionary power. Based on the absence of any record that has been kept, it can only be assumed that HQ-TE has not used its discretionary power very often:
 

*« Hydro-Québec doit tenir un journal qui présente de façon détaillée les circonstances et la manière dont elle exerce son pouvoir discrétionnaire selon les conditions réglementaires. »<sup>68</sup>*
- The specifics of the Quebec regulatory environment makes it difficult for an American entity to bring forth a complaint and to properly estimate the chances of its success. Additionally, the low level of activity of the rest of HQ-TE's customer base explains why so few complaints have been made against the use of the HQ-TE network.

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<sup>65</sup> NEG-5, page 6, NEG-9, pages 56 to 60.

<sup>66</sup> Argumentation of Hydro-Québec, August 9, page 168.

<sup>67</sup> HQT-13, Doc, 14.1.1, page 11.

<sup>68</sup> Id.

- NEG only asks that equal treatment be afforded for all transactions carried out by HQ, its affiliates or any other market participants. If HQ-TE is allowed to proceed with a certain type of transaction with an affiliated company, all participants should be afforded the opportunity to carry out the same type of transaction.

### Lack of Open Season

- In May of 1997, NEG explained its observation of the initial allocation of available firm long-term transmission capacity to HQ-Production and noted that HQ-Production reserved most, if not all, of the firm long-term transmission capacity on the key interconnections with surrounding markets.<sup>69</sup>
- NEG commented on the absence of a proper "Open Season" auction process for the transmission capacity on the HQT-NE path and stated its belief that the process should have been conducted in accordance with industry practices.
- To illustrate industry practices, NEG presented its experience in dealing in all of the U.S. open energy markets<sup>70</sup>. The habitual initial steps in order to move from a regulated to an unregulated market is for the transmission provider to determine the treatment to be afforded to current transactions. Two choices are available: (i) maintain the existing status, or (ii) conform to the new market environment.
- NEG explained to the Régie the advantages and disadvantages of each alternative and gave various examples from the different power pools<sup>71</sup>. The choice of one of the two alternatives is an essential step to the implementation of true competition and allows all market participants to have a chance to obtain transmission services on key paths.

*"Les détenteurs de transactions existantes doivent s'entendre avec le "transmission provider" sur le traitement de ces transactions-là. C'est un choix qui se fait. La décision est maintenue pour la durée du contrat. Donc, quand le marché ouvre aux États-Unis ou quand le marché ouvre au Québec, les détenteurs de transactions prennent un décision et cette décision-là, ils l'ont une fois. C'est une option qu'ils ont à prendre s'ils vont garder le statut de leurs présentes transactions ou qu'ils vont changer pour le statut de OASIS."*

(..)

*"Donc, ce que l'on voit, lorsque le gouvernement a mis en place le décret, il avait une bonne idée que le contrats allaient être grands-pères.""<sup>72</sup>*

- With the Quebec Government's adoption of *Bylaw 659*, there was a grandfathering of the Firm Energy Contract ("FEC") with the NEU and as a result the Transmission Tariff was established. Market participants understood that the one-time election under this

<sup>69</sup> NEG-9, pages 35 and ff.

<sup>70</sup> NEG-9, pages 31 and 32.

<sup>71</sup> NEG-16, NEG-17, NEG-18, NEG-19.

<sup>72</sup> Testimony of Richard Bordeleau, June 1, 2001, Vol. 30, pages 69 (lines 3 to 13) and page 80 (lines 22 to 24).

contract would entitle them to transmission capacity until the expiration of the contract and that an Open Season would follow in accordance with industry practices in the U.S.<sup>73</sup>

- When HQ-US received its FERC market-based rate authority on November 12, 1997, HQ-Marketing and HQ-TE agreed to retroactively change the FEC from its grandfathered status to an OASIS regime<sup>74</sup>. By virtue of that decision, HQ obtained a perpetual right of first refusal due to the lack of an appropriate Open Season as regards that capacity.

*« Donc pour des raisons administratives internes, entre mai et novembre quatre-vingt-dix-sept (97), il avait été un peu pris pour acquis que ce serait traité comme un contrat grand-père, que le service vers la Nouvelle-Angleterre, pour livrer le contrat des FEC, serait considéré comme un contrat grand-père. »*<sup>75</sup>

- HQ-TE testified that, since no customers besides HQ requested transmission service on this path from May to November 1997, no customer has been penalized by the retroactive change of status of the FEC.<sup>76</sup>
- However, HQ-TE admitted that the firm capacity on that path was not even available to customers since it was entirely reserved by its affiliate:

*"Q. Maintenant, qu'est-ce qui était affiche sur le site OASIS a ce moment, à votre connaissance, à compter du premier mai 1997, jusqu'au 17 novembre 1997?"*

*(...)*

*R. Pour ce chemin-là, je croirais que l'ATC ferme ne devrait pas être affiche a 2000 MW puisqu'on avait considéré, jusqu'en novembre 1997, que c'était un contrat grand-père, pour lequel Hydro-Québec avait des obligations envers son client.*

*(...)*

*Q. Mais dans les faits, est-ce qu'on doit conclure que pour ce chemin-là particulier, dans les faits, il n'y en avait pas de capacité de toute façon, peu importe la demande, il aurait fallu nécessairement passer par une procédure d'étude d'impacts dans ce cas précis?"*

*R. Oui, oui."*<sup>77</sup>

- Furthermore, the November 17<sup>th</sup> request was only posted on HQ-TE OASIS on December 15, 1997 and this constitutes a breach of the Code of Conduct which obligates

<sup>73</sup> Testimony of Richard Bordeleau, June 1, 2001, Vol. 30, pages 87.

<sup>74</sup> NEG-25.

<sup>75</sup> Testimony of Denis Gagnon, June 14, 2001, Vol. 31, page 173 Vol. 31, (lines 5 to 11).

<sup>76</sup> Cross-examination of Denis Gagnon, June 14, 2001, Vol. 31, page 217 (lines 5 to 9 and 13 to 18), page 218 (lines 17 to 23).

<sup>77</sup> Examination of Denis Gagnon, June 14, 2001, Vol. 31, page 173.

HQ-TE to have a duly executed Service Agreement in place and a reservation posted on OASIS.<sup>78</sup>

- The reservation priority clause for existing firm long-term service customers essentially permits HQ-Production to lock-in its firm long-term transmission reservations *ad infinitum* leaving next to nothing for other market participants. This privileged position which is occupied by HQ is discriminatory. It leaves no room for other market participants to acquire long-term transmission services and it eliminates any possible competition to HQ for this class of service.

*" As you know or as far as we can tell you, PG&E Energy Trading, thought the acquisition of the New England Electric System, assets of the New England Electric System, has a part of the FEC contract that belongs to them. And as a new party to this contract, we have not had the opportunity to compete with Hydro-Québec at the end of the contract contrary to what is the case of grandfather contracts. "*

- NEG believes this represents a serious breach of the conditions attached to HQ-US's FERC certification; namely it is a breach of the conditions which relate to transmission market power, barriers to market entry and the condition of comparable treatment that was to be afforded to all users of the transmission grid. As such, NEG requests that Section 2.1 of HQ-TE's OATT should be maintained and that an Open Season be held at the end of the FEC in accordance with the standards of the industry and in accordance with FERC Order 888 principles.

### Business Examples

- NEG has brought to the Régie's attention several instances in which its requests have been denied for undue reasons as well as some relevant regulatory references to similar situations in the U.S.<sup>79</sup>

### *NRG Requests Treatment*

- NEG explained the conditions for a request to be considered valid as such conditions are clearly stated in HQ-TE's OATT. Such conditions include the mandatory use of OASIS to submit any firm point-to-point transmission service requests and the use of time-stamped records in order to establish the priority of the request<sup>80</sup>.

*"Quand on fait une réservation sur l'écran OASIS, c'est toutes les sections qu'il faut remplir. Et par-dessus ça, quand on a une réservation de long terme d'un an ou plus, on est tenu de donner un dépôt. ...*

*(...)*

*Ce qui est vraiment important, c'est le "time stamp" la façon dont on sait qu'une réservation arrive au transporteur avant l'autre. Avant l'OASIS, avant que l'OASIS soit*

<sup>78</sup> HQT-13, document 14.1.1, page 17, HQT-2, document 5, page 14.

<sup>79</sup> NEG-9, pages 40 to 74.

<sup>80</sup> OATT, Section 17.

*sur informatique et puis qu'on ait accès via internet, la "business practice" aux États-Unis, et puis c'est dans le tarif aussi dans la section 17, la façon c'est d'avoir un "rubber stamp" pour notre réservation, c'est soit d'envoyer un fax qui va nous prouver la date et l'heure à laquelle on fait une réservation ou encore d'avoir une conversation téléphonique enregistrée.*

*Chacune de ces méthodes-là nous donne le "rubber-stamp" et puis c'est avant le système OASIS, c'est la façon de faire la business.*

*(..)*

*Par contre, le "transmission provider" est tenu par son code de conduite de soumettre dans les vingt-quatre (24) heures la demande sur OASIS et de montrer qu'en effet, mon site n'était pas fonctionnel mais quelqu'un m'a fait une demande, je l'ai acceptée, voici, j'affiche que j'ai été en dérogation avec mon code de conduite, je l'ai acceptée mais je vous avertis que ça a été fait." <sup>81</sup>*

- Further, NEG clearly stated the application of the 60-day maximum window to renew any yearly firm reservation service. The 60-day maximum window is based on an applicable FERC decision and on correspondence that was exchanged in a similar case<sup>82</sup>.

*« Le client du service de transport dispose d'un droit de renouvellement de ses contrats fermes d'un an ou plus pourvu qu'il en avise le transporteur au plus tard soixante jours avant la fin du contrat. »<sup>83</sup>*

*"C'est sur que de régler ça un trente et un (31) décembre, ce n'est pas la meilleure période, Donc, le soixante (60) jours, nous sommes favorables a ca. »<sup>84</sup>*

- Keeping in mind these principles and practices, NEG commented on the treatment HQ-TE gave to several requests NEG submitted in order to obtain service on the interconnection with New England. The chronological order of events was as follows<sup>85</sup>:
  1. HQ elected on November 17, 1997 to retroactively place the necessary transmission services to supply the FEC under an OASIS regime. HQ requested and subsequently obtained yearly firm service on the HQT-NE path for 2,000 MW. With this election, a right was attached under Section 2.2 of the OATT to renew this reservation for a similar yearly firm reservation on the HQT-NE path by way of a 60-day notification.
  2. From November 13 to 15, 2000 (after the expiration of the 60-day notification period), NRG posted six requests on TE-OASIS for yearly firm service on the HQT-NE path.

<sup>81</sup> Testimony of Richard Bordeleau, June 1, 2001, Vol. 30, page 93 (lines 23 to 28), page 95 (lines 9 to 16) and page 94 (lines 1 to 18).

<sup>82</sup> NEG-27.

<sup>83</sup> HQT-13, Document 13, page 18, R.c)

<sup>84</sup> Testimony of Mr. Denis Gagnon, June 14, 2000, Vol. 31, page 160 (lines 2 to 5).

<sup>85</sup> NEG-9, pages 45 to 52.

3. On November 16, 2000, HQ-Marketing posted a request (#111608) for yearly firm service on OASIS for 2,000 MW on the HQT-NE path. This first request was then withdrawn on the same day and replaced by a similar one (#111629) with the following comment: *"In accordance with the written requests communicated dated Oct. 27, 2000."* This reference was made even though the OASIS system was in effect and functioning on October 27, 2000 and therefore any written requests should have been negated.
4. HQ-TE accepted request #111629 on November 20, 2000 for the total capacity on the HQT-NE path.
5. On November 28, 2000, NRG requested an explanation for the refusal of its previous requests and did not receive a satisfactory answer from the TE representative. TE informed NRG that the six requests were denied for lack of ATC on that path and they gave the following reason: *"The customer which has a firm yearly reservation for 2,000 MW on the NE path for the year 2000 has the right to continue to take transmission service in 2001 when the contract expires according to Section 2.2 of the Tariff."*
- NEG claimed that the October 27, 2000 letter was accepted in violation of HQ-TE's own Tariff and did not comport with industry practices and with the Nov. 12, 1997 FERC Order for HQ-US's marketing license and that it also represented a questionable renewal right granted to HQ.

*« C'est en novembre deux mille (2000) que la compagnie NRG a demandé du contrat, pardon, a demandé du service point a point vers la Nouvelle-Angleterre. Donc, on était après la période de soixante (60). Et donc, a ce moment-là, ce qui s'applique, c'est la deuxième partie de l'article 2.1, donc que les demandes reçues à cette date doivent être traitées conformément à l'article 13.2 du contrat qui, lui, dit essentiellement que c'est premier arrivé, premier servi selon la capacité disponible et qui rappelle également que l'article 2.2 s'applique. »<sup>86</sup>*

- NEG also believes that this event represents a breach of HQ's own Code of Conduct. Such Code of Conduct states:

*"that Hydro-Québec employees assigned to Service énergétique will ask for transmission services to Hydro-Québec as any other major wholesale player, who is not affiliated company, would. Usually and as much as possible, these services applications will be treated through OASIS. Any failure to abide to the principles provided for in Hydro-Québec standard of conduct, will be posted on OASIS within 24 hours."<sup>87</sup>*

#### *Other Business Examples*

- NEG presented concrete examples where transactions have been accepted for its affiliate but have been refused to other market participants for a variety of reasons, including requirement of a source identification or a wheel-in path attached with a wheel-out

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<sup>86</sup> Testimony of Mr. Denis Gagnon, June 14, 2000, Vol. 31, page 156 (lines 21 to 28) and page 157 (lines 1 to 4).

<sup>87</sup> HQT-13, Document 14.1.1, pages 17-18; HQT-2, Document 5, page 14.

request<sup>88</sup>.

- Finally, NEG presented examples of transactions carried out across the Northeast between HQ-Marketing (including its U.S. affiliate), New Brunswick Power, Nova Scotia Power, and Ontario Hydro but which were refused to NEG or other market participants such as NRC<sup>89</sup>.

*“It is two examples where you have non-open markets where distribution or generation is transacting and where TransEnergie let the transaction go because they see the tag, the source, and the sink, they let that transaction go, and I am not able to transact at the Ontario border myself.”<sup>90</sup>*

*“Here, we can see that Nova Scotia Power can deal at the New Brunswick border even if Nova Scotia is not an open network.*

*You can see by looking at the reservation that Nova Scotia Power is the one which reserved transmission from Quebec to Nova Scotia since they were authorized clients of New Brunswick, but Hydro-Québec sold energy at the border even if it didn't – dealt at the border even if it was a non-open market.”<sup>91</sup>*

*“Q. Pouvez-vous me dire si, à quelque moment que ce soit, Hydro-Québec, au cours des dernières années, a transigé avec l'Ontario à la frontière new yorkaise?”*

*R. Vous parlez de Hydro-Québec Marketing. Je crois qu'ils l'ont fait, oui.*

*Q. Est-ce que c'est plusieurs fois?”*

*R. C'est possible que ce soit plusieurs fois. Oui. C'est possible mais je ne le sais pas.*

*Q. Est-ce que vous savez si c'est quelque chose qui dure depuis plusieurs années?”*

*R. Bien, je crois qu' Hydro-Québec a toujours transigé avec ses voisins.”<sup>92</sup>*

- NEG hopes that it has shown concrete reasons as to why HQ-TE's customer activities should be characterized as being marginal.

### Information Posted on the OASIS

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<sup>88</sup> NEG-9.

<sup>89</sup> Id. pages 64 to 74.

<sup>90</sup> Testimony of Richard Bordeleau, June 14, 2001, Vol. 31, page 121 (lines 21 to 27).

<sup>91</sup> Testimony of Richard Bordeleau, June 1, 2001, Vol. 30, page 146 (lines 1 to 10).

<sup>92</sup> Cross-examination of Denis Gagnon, June 14, 2001, Vol. 31, page 196 (lines 120 to 24).

- NEG presented its views on the requirements of FERC in terms of OASIS data postings and its personal experience as regards requesting information from HQ-TE representatives<sup>93</sup>. NEG also challenged the accuracy of OASIS data and OASIS' ability to provide updated information on a timely basis. Further, it is NEG's view that data on the load situation should be available on a real-time basis as is the case with NB Power. Improvements should be made to the TTC/ATC postings so that information concerning TTC/ATC is consistent on both sides of an interconnection<sup>94</sup>.
- NEG concluded that HQ-TE meets the minimum information posting requirements required by FERC Order 889 but falls short of the standards set by existing U.S. ISOs.
- Further, HQ-TE does not meet the data audit requirements of FERC Order 889. Of the ten categories of data shown on OASIS only two are functional and it is not possible to download the information. Historical information for 2000 is posted in Excel format but no information is provided as to the reasons for denied requests. NEG has been unable to obtain this historical data in a usable format<sup>95</sup>:

*« Parfait. Juste à titre indicatif, si on prenait la troisième ligne là, pourriez-vous me dire qui est le client? »*

*Je vous avoue que, comme je vous dis, moi, ça peut m'apparaître un petit peu, je ne fais pas moi-même de réservations sur OASIS alors je ne suis pas un " power trader ", je ne suis pas familier avec les codes qu'ils emploient. Évidemment, je présume qu'il y a des codes dans ça.*

*(...) C'est sur que moi, je n'ai jamais fait une réservation sur OASIS, je ne suis pas en position pour en faire, donc moi, je ne peux pas vous dire, mais NEG ne m'avait pas mentionné que l'information n'était pas satisfaisante. »<sup>96</sup>*

*« D'accord. Quand vous avez transmis cette information-là sous format Excel, est-ce que vous avez transmis en même temps l'identification des codes ou la définition des codes? »*

*Moi, j'ai transmis un fichier Excel qui m'a été fourni par les gens d'Informatique, qui ressemble à celui qu'on voit à l'écran, et je n'ai pas eu d'autre demande d'information de la part de NEG. Maintenant les clients sur OASIS, je crois que les clients sur sont identifiés, là, est-ce que ça prend un code? Mais je pense que si ça prend une liste, je pense qu'un coup de fil aurait permis d'avoir les noms des clients qui vont avec les codes, si ce n'est pas déjà disponible sur OASIS, ce que je ne sais pas. »*

*(..)*

*« Pour les autres, je vois plusieurs colonnes ou c'est écrit " nul ". Moi, quand j'ai transmis le fichier, je l'ai rapidement parcouru, mais je vous avoue très rapidement, je l'ai*

<sup>93</sup> NEG-9.

<sup>94</sup> Testimony of Jack Hawks, June 1, 2001, page 41.

<sup>95</sup> Testimony of Steve L. McDonald, June 1, 2001, Vol. 30, page 42 (lines 12 to 18).

<sup>96</sup> Cross-examination of Mr. Denis Gagnon, June 14, 2001, Vol. 31, page 187 (lines 1 to 19).

*ouvert, j'ai vu que c'était une information comme ça mais je n'ai pas vu effectivement. Si j'avais vu des dizaines de colonnes ou c'est écrit " nul, nul, nul, nul ", j'aurais peut-être posé des questions. Alors je ne suis pas certain, est-ce qu'il y a eu un problème de e-mail, »<sup>97</sup>*

### **Service Agreement (6.2)**

- It is important that the proposed TE-OATT revisions respect the principles laid out by FERC in its various orders and decisions and that the various revisions take into account the current practices of surrounding markets. NEG believes that any divergence should be vigorously challenged.
- Following is a summary of certain major points that were highlighted by NEG:
  - The elimination of the right to service under unsigned service contracts (Section 15.3) is in conflict with the FERC *pro forma* tariff and leaves customers at the mercy of the transmission provider;
  - The elimination of references to the Régie's jurisdiction in several Sections creates ambiguity and this ambiguity will only serve to increase HQ's discretion;
  - As regards the initial allocation of ATC, Section 2.1 should not be eliminated for the reasons mentioned on pp. 17-18 of NEG's arguments. At a minimum, HQ-TE should demonstrate its compliance with Section 2.1 prior to its elimination;
  - The proposed 48-hour notice for termination within Section 7.3 is draconian. It requires transmission customers to submit demands to HQ regardless of whether this is really merited;
  - The interest rate on customer deposits should be restored to prime plus two percentage points (Sections 17.3 & 7.2).

## **IV. COMPLEMENTARY ARGUMENTATION**

### **A. Proposed Discount Policy**

- By comparing transmission pricing in other regions and their differentials to the Quebec region, NEG has also demonstrated that HQ-TE's excessive rate structure prevents economic trading<sup>98</sup>.

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<sup>97</sup> Id. page 188 (lines 14 to 27), page 189 (lines 20 to 28) and page 190 (lines 1 to 3).

<sup>98</sup> NEG-9, page 20.

*" The point we want to make here is that, at certain hours, there might be New England or New York participants which are not transmitting, which shows there is capacity still available. Since there is capacity available, the good thing for taxpayers and clients of Hydro-Québec is that there are third parties who wish to transmit through this unused capacity if the discount makes the transaction economically feasible.*

*So there would be potential revenues if the rate was lowered by discounts from time to time to allow transactions. That is the point we want to make in that section. "* <sup>99</sup>

- Further, NEG presented its view that current discount practices are not market-based and they favour HQ-TE affiliates :

*"So, basically, that transaction will not be economically viable for me to do or for any party that is not in Hydro-Quebec's position. They're still doing the transaction paying sixteen dollars (\$16.00), or whatever the tariff is at that time, just because they are able to have access to the wholesale market within Quebec, which is ninety-nine percent (99%) themselves."*<sup>100</sup>

- HQ-TE is inconsistent in its explanation of how it operates its discount policy. Such policy cannot be based on price differentials between the "Quebec market" and neighbouring markets given that a short-term power market does not exist in Quebec:

*« Ça n'existe pas au Québec. La structure du marché est différente au Québec. Je pense que les gens ici connaissent un peu la législation, le contexte du Québec. Et donc, il n'y a pas au Québec de marché public d'énergie de court terme. On sait que le distributeur fera des appels d'offres sous la gouverne de la Régie. Donc, c'est vraiment un marché public de long terme auquel pourront participer tous les participants, mais il n'y a pas de marché public de court terme. »*

- NEG presented examples of how discounts would be determined if they were really based on price differentials between two surrounding regions instead of being based on HQ-Production Quebec supply rates<sup>101</sup>.
- NEG illustrated the discount methodology that HQ-TE would follow if its methodology was really based on price differentials between two surrounding regions (New York vs New England), instead of being based on HQ-Production Quebec supply rates. Additionally, NEG illustrated that the pricing volatility experienced in these markets and the lower average clearing prices encountered this year do not support HQ-TE's position not to allow discounts since June of 2000.
- NEG urges the Régie to refuse the discretionary pricing policy proposed by HQ-TE and asks the Régie to request that HQ-TE develop precise pricing parameters based on surrounding power pool prices.

<sup>99</sup> Testimony of Richard Bordeleau, June 1, 2001, Vol. 30, pages 127 (lines 27 & 28) and page 128 (lines 1 to 14).

<sup>100</sup> Testimony of Steve L. McDonald, June 14, 2001, Vol. 31, page 51 (lines 10 to 17).

<sup>101</sup> NEG-9, pages 75 to 78.

## V. CONCLUSIONS

- For all the reasons mentioned herein, NEG believes that, in practice, (i) the Quebec energy wholesale market is not open to competition, and (ii) NEG's access to the HQ-TE transmission grid is not comparable to the access HQ enjoys in the U.S.
- Thus, NEG asks the Régie to:
  - Order HQ-TE to proceed with an Open Season for HQT-NE path capacity and to fully comply with Section 2.1 of its OATT;
  - Order HQ-TE to comply with FERC Orders 888, 889 and 2000, in conformity with industry practice and the industry standards that have been set by surrounding power pools;
  - Ensure that HQ-TE acts as an independent system operator in full compliance with RTO requirements and that it offers services identical to the services provided to HQ-US in surrounding power pools;
  - Ensure that all participants are treated on “the same level playing field” by (i) requesting HQ-TE to constantly apply a single delivery point (HQT) for deliveries and receptions at any busbar inside the Province (as is the case for HQ-Distribution and HQ-Generation), and (ii) by requesting that HQ-TE consider any delivery at any HQT border (Ontario, New York, New England, New Brunswick, Labrador) as being delivered at HQT.;
  - Properly allocate the cost of the Generator Lead assets;
  - Implement market power mitigation measures and allow for a higher level of customer participation (other than HQ) in the development of HQ-TE activities;
  - Reaffirm the one-year prescription period for filing a complaint to the Régie under the relevant provisions of the *Act Respecting the Régie de l'énergie*;
  - Order Hydro-Québec to improve its TTC/ATC postings so that information is consistent on both sides of interconnections;
  - Maintain the 30 calendar days notice of termination, the 60 calendar days notice in case of suspension and the requirement that the Régie has to approve any such termination or suspension request, all in accordance with Section 7.3 of *Bylaw 659*.
  - Maintain and reaffirm its jurisdiction where it deems necessary within *Bylaw 659* in order to ensure comparable treatment is received by all market participants in Québec and in order to rectify open access inequities in the application of HQ-TE's OATT;
  - Order Hydro-Québec to conform to its Code of Conduct to keep a detailed record of any use of its discretionary power;
- **Given the conclusions reached in this matter, NEG asks the Régie to:**
  - Assure the consistency of HQ-TE's OATT with the FERC *pro forma* tariff and maintain in force every one of the Sections and conditions of Hydro-Québec *Bylaw 659* which are necessary to attain the above objectives, namely Sections 2.1, 7.2, 7.3, 12.1, 12.5, 15.3, 17.3 and any other Sections that the Régie deems necessary to ensure industry standards are maintained;
  - Recognize as useless and therefore refuse Hydro-Québec's request that Section 2.2 of *Bylaw 659* be modified and as such refuse to add the following words to that Section

“inasmuch as the firm service customer advises the Transmission Provider of his intention to renew 60 days prior to the termination date of the contract”;

- Request that Hydro-Québec submit for approval to the Régie a new draft of modified conditions that would implement such changes as the Régie would order;
- Only when all of the various market participants have equal and open access to HQ-TE's transmission system will the best and highest use of the system be possible. Increasing competition could (i) maximise revenues from sources other than Hydro-Québec, (ii) maximise potential alternative supply sources, and (iii) allow Quebec ratepayers to obtain maximum benefits from the deregulation of the energy industry.

## **VI. COSTS OF NEG FOR THIS HEARING**

- NEG asks the Régie to order Hydro-Québec to reimburse NEG's reasonable fees and expenses incurred in the present hearing.
- NEG's participation in this hearing was useful given that NEG was able to bring forth its unique perspective as a marketer within the North American Market. NEG has incurred considerable costs and put forth a considerable effort in order to analyse and present the evidence it did within the themes on which it decided to intervene. In order to limit its attendance in front of the Régie, NEG devoted considerable time analysing the evidence presented by HQ and the other intervenants and this enabled it to prepare and present a comprehensive picture of the market, the various participants involved therein and the logic and accepted rules of the game.

**RESPECTFULLY SUBMITTED.**

Montreal, September 6<sup>th</sup>, 2001

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**Me Marc Laurin**  
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