

CONFIDENTIALITÉ DES INFORMATIONS

**PREUVE DE BARRY J. SHEINGOLD
NEW ENERGY OPPORTUNITIES, INC.**

DIRECT TESTIMONY OF BARRY J. SHEINGOLD

Q. Please state your name, company and business address.

A. My name is Barry J. Sheingold, President of New Energy Opportunities, Inc., 125 Powers Road, Sudbury, Massachusetts 01776, U.S.A.

Q. Please state your educational background and professional qualifications.

A. I received a B.A. in American History from New College, Sarasota, Florida. I received a J.D. *cum laude* from Boston College Law School. I have over 25 years of experience in the energy industry, most of which is in the wholesale electric power segment.

I am currently the principal in a consulting practice that advises participants in the electric power industry in the following areas: long-term power purchase and sales contracts, especially for renewable energy projects, competitive procurements (formal and informal), restructuring of existing power purchase and sale contracts, and viability and market analysis for wind energy projects.

From 1989-2000, I held a variety of senior legal and business positions at Citizens Power LLC and its predecessors. In the earlier years, I led the company's efforts in assisting developers of independent generating projects to obtain long-term power sales contracts to assist them in financing their plants. As part of this effort, I participated in many competitive bids, primarily in the United States. In addition, I advised several electric utilities in purchasing electric power and restructuring existing power purchase contracts. Previously, as counsel for Delmarva Power & Light Company, a U.S. electric utility, I played a key role in developing a competitive bid process for additional generating capacity, which was issued after I left the company.

I have testified before the Connecticut Department of Public Utility Control and have provided legislative testimony in Massachusetts and California. As a regulatory counsel, I have practiced in a number of U.S. regulatory jurisdictions, including Maryland, Delaware, Massachusetts, and the Federal Energy Regulatory Commission. I have participated in power generation, competitive bidding and/or contract restructuring projects in a number of U.S. states, including Maine, Florida, Massachusetts, Connecticut, Oregon, Michigan, South Carolina, California, and Nevada. More detail on my professional background appears in Appendix 1.

Q. On whose behalf are you testifying?

A. Hydro-Québec Distribution.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to explain why it is in the public interest for Hydro-Québec Distribution not to publicly disclose certain information in connection with bids submitted in response to Hydro-Québec Distribution's call for tenders process and Hydro-Québec Distribution's evaluation of the bids.

Q. What information are you referring to?

A. The information contained in the technical appendices to Hydro-Québec Distribution's Exhibit HQD-2, document 3, and certain pricing and price-related provisions in the power purchase contracts executed by Hydro-Québec Distribution. This information consists of:

1. A summary containing the specific price and non-price scores for each bid submitted and the results of Hydro-Québec Distribution's

economic evaluation of combinations of bids and associated details.

2. Natural gas price and other economic forecasts used by Hydro-Québec Distribution in its evaluation of bids, including identifying information on the authors of the forecasts.
3. Bid prices associated with options to defer contract commencement dates and Hydro-Québec Distribution's associated assignment of value to these options.
4. Option premium and exercise date provisions in the power purchase contracts between Hydro-Québec Distribution and the chosen suppliers; under these provisions, Hydro-Québec Distribution would have the right to defer the commencement date of the power purchase contracts for one-year periods by making certain option premium payments.
5. The pricing formula contained in the power purchase contract between Hydro-Québec Distribution and TransCanada Energy Limited ("TCE").

Q. Could you please summarize the major points made in your testimony?

A. Certainly. The major points are:

- i. There is a substantial risk that public disclosure of the bid and contract pricing and other confidential terms of bids and contracts would discourage bidders from participating in future Hydro-Québec Distribution competitive procurements, resulting in less competitive procurements and potentially higher prices to Hydro-Québec Distribution and its ratepayers.
- ii. Public disclosure of Hydro-Québec Distribution's market price forecast for natural gas, the identity of the forecasters, and the numerical results of its evaluation could allow bidders in future competitive tenders to "game" the solicitation and bid prices higher than they otherwise would bid. Again, the impact would be adverse to Hydro-Québec Distribution and its ratepayers.
- iii. Accordingly, it is my recommendation that the information Hydro-Québec Distribution has filed under seal should not be publicly disclosed.

Q. Please describe the context in which the issue regarding public release of this information arises.

A. In early 2002, Hydro-Québec Distribution issued a call for tenders for the purchase, under long-term contracts, of 1200 MW of firm capacity and associated energy to meet Quebec's electricity supply needs (the initial

request for 600 MW was increased to 1200 MW). The call for tenders was open to any interested bidder, including the Hydro-Quebec Production division (“HQP”), and to all commercially available types of generation; provided that the generation facilities would be located within Quebec or would be located outside of Quebec if the energy delivered would not be transmitted through any specified interconnection points on the TransEnergie transmission system. Purchases from single projects (or projects at a single site) were limited to 600 MW. The winning bidders would negotiate power purchase and sale agreements with Hydro-Québec Distribution. These contracts would be subject to the approval of the *Régie de l’énergie* for determination, *inter alia*, whether the “combination of contracts carries the lowest price, for the quantity of electric power and the conditions, stipulated, taking into account the applicable transmission cost . . .”¹

On October 4, 2002, Hydro-Québec Distribution announced that it had selected two winning bidders—Hydro-Quebec Production and a partnership of Groupe Axor, Inc. and Calpine Canada Power Corporation—for contracts totaling 1200 MW. TransCanada Energy Limited’s 507 MW Becancour project was selected as a back-up source of supply. However, Hydro-Québec Distribution indicated that no agreement

¹ Regulation O.C. 1354-2002, 20 November 2002, Section 2(1).

with the Groupe Axor/Calpine Canada partnership could be reached consistent with the call for tenders. Hydro-Québec Distribution subsequently signed two power purchase contracts with Hydro-Québec Production for a total of 600 MW from two existing HQP facilities and a power purchase contract with TCE, the back-up supplier, with respect to the 507 MW Becancour project. As of the date of this testimony, Hydro-Québec Distribution is submitting its application for approval of long-term power purchase contracts with TCE and HQP.

Q. Please describe the information that Hydro-Québec Distribution has filed with the Régie in support of its contract awards in the public version of the application?

A. In the public version of its request, Hydro-Québec Distribution has filed the two power purchase agreements with HQP, with the option exercise date and premium provisions withheld, and the power purchase contract with TCE, with the pricing formula and option exercise date and premium provisions withheld. Hydro-Québec Distribution has also provided the aggregated cost of the three contracts in real levelized Canadian dollars—6.1 cents/kWh—and has described the methodology used in the bid selection process. In addition, Hydro-Québec Distribution has filed a report comparing the aggregated cost of the winning bids with prices for

power in U.S. Northeastern power markets, taking into consideration applicable transmission costs. Finally, Hydro-Québec Distribution has submitted a report stating the actions taken or to be taken by it in response to a report issued by the Régie regarding the call for tender, contract awarding procedure and code of ethics.

Q. Have you reviewed both the public version of Hydro-Québec Distribution's filing in this proceeding and the information filed under a request for confidential treatment?

A. Yes, I have read an English translation of the information filed by Hydro-Québec Distribution.

Q. Please describe the information that Hydro-Québec Distribution has filed with the Régie under seal to maintain its confidentiality?

A. The information pertains to the bids submitted by potential suppliers in the call for tender process and Hydro-Québec Distribution's evaluation of those bids. As indicated previously, the information consists of pricing and other confidential terms in the awarded contracts, the costs associated with both the winning bids and the bids that were not selected, and the numerical results associated with Hydro-Québec Distribution's evaluations of the bids,

including its Stage 3 analysis of combination of bids. In addition, the information consists of the key natural gas price and economic forecasts used in Hydro-Québec Distribution's economic analysis, which includes direct and indirect identifying information on the authors of the forecasts.

Q. Why do you believe that it is in the public interest for Hydro-Québec Distribution to file certain pricing-related and other sensitive commercial information under seal?

A. Quebec is part of a larger North American power market. Bidders compete to obtain long-term power sales contracts and build new generation facilities. Disclosure of bid prices and other sensitive contract terms and conditions could put them at a competitive disadvantage relative to other wholesale generation companies. Disclosure of this information could be used to provide competitors with insight on the relative competitiveness of a specific project; this information could be used against the interest of the bidder in a future call for tenders. Perhaps of even greater significance, disclosure can expose a company's bidding strategies, which could be valuable information to a competitor in any situation in which it is competing with the bidder in the larger North American market.

In my experience, the prevailing practice of North American distribution electric utilities and their regulatory commissions is to allow confidential treatment for bid prices and other confidential contract terms in connection with competitive bidding processes, at either the request of the distribution company purchaser, potential suppliers or both. In light of the established practice for retaining confidentiality of bid prices and contracts and the potential harm to wholesale generation companies associated with disclosure of bid pricing and other sensitive commercial information, the Régie would run a very substantial risk of making it unattractive or less attractive for wholesale generators to participate in future competitive bid processes in Quebec if it were to decline reasonable requests by potential power suppliers and/or the distribution company for confidential treatment. The potential or likely impact would be to make future tenders less competitive than they would otherwise be, which could result in higher prices in future tenders and higher rates for Quebec ratepayers than would otherwise be the case. In order to protect the interest of Quebec ratepayers, public disclosure should not be ordered with respect to bid pricing (whether of winning or losing bidders) and other competitively sensitive information for which confidential treatment is sought.

At the same time, the information submitted under seal will allow the Régie and its staff to evaluate whether Hydro-Québec Distribution appropriately

performed its obligation to select the bids that would produce the lowest cost power for Hydro-Québec Distribution's customers.

Q. Please describe those aspects of Hydro-Quebec's evaluation methodology that are described in the public version of Hydro-Québec Distribution's application in this proceeding and those aspects that are filed under seal?

A. In the public version, Hydro-Québec Distribution describes its price and non-price evaluation factors, the different stages of its evaluation process, how it conducted its analysis, the role of the independent consultant, Samson Belair/Deloitte & Touche, the selected bids, and the real levelized aggregated cost of the selected bids.

In the non-public version, Hydro-Québec Distribution includes the numerical results of the Stage 2 and Stage 3 evaluations for the different bids and the natural gas and other economic forecasts utilized. The identity of certain forecasters is either stated or can be inferred based on the specific numerical values in the forecasts (such inference is possible because the same forecasts can be obtained from the same forecasters by other industry participants).

Q. Please explain why it would be in the public interest not to publicly disclose certain details of Hydro-Québec Distribution's evaluation methodology?

A. If the details of Hydro-Québec Distribution's evaluation methodology were publicly disclosed, bidders in future tenders, knowing what forecasts will be, or will likely be used could ascertain how bids would be scored and could develop a bid strategy to "game" the solicitation. For example, a generator that is not developing a natural gas-fired project, knowing which gas forecasts are likely to be used, could bid its project to undercut the bid of gas generators but could price it above what it might otherwise bid. The result could be higher bid prices to Hydro-Québec Distribution and thus higher rates for Hydro-Québec Distribution's customers. Simply stated, disclosing too much of a utility's evaluation methodology will create a very substantial risk that future bidders will not bid their best (i.e., lowest) prices.

This is a matter of immediate concern in light of Hydro-Québec Distribution's recent issuance of two calls for tenders (for power purchase contracts with owners of biomass and wind energy generation facilities) as well as all-source calls for tenders that are being planned for the next few years.

At the same time, all of the key assumptions utilized in Hydro-Québec Distribution's evaluation methodology have been disclosed to the Régie in Hydro-Québec's confidential version of its application. It serves the public interest to protect ratepayer interests in connection with future tenders while addressing the appropriateness of Hydro-Québec Distribution's actions and selections with respect to the contracts resulting from the 2002 call for tenders. The latter issues can be addressed through the Régie staff's review of both the confidential and public versions of Hydro-Québec Distribution's application. Moreover, the staff of the Régie has had access to the details of Hydro-Québec Distribution's evaluation through the staff's monitoring process.

Q. Isn't there a public interest in public disclosure of all pertinent information filed with a regulatory commission?

A. Yes, there is. Absent strong reasons for treating information as confidential, all information filed with regulatory commissions should be, and usually is, made public. However, where public disclosure poses a strong risk for the very interests the regulatory commission is directed to advance—obtaining the lowest reasonable costs for ratepayers—the public interest in maintaining confidentiality can outweigh the public interest in public disclosure.

Q. Can the public interest in public disclosure and the public interest in non-disclosure of confidential information be accommodated?

A. Yes, there are a number of ways this can be accomplished. One is to aggregate confidential information where the act of aggregation provides important relevant information to the public while retaining the confidentiality of the component data. Another method is to limit the time period that information will be held confidential. Where public disclosure would currently cause harm but that harm would be eliminated with the passage of time, the requirement of confidentiality can be, and should be, limited. Finally, information which otherwise could qualify for confidential treatment can be disclosed if the party that would have a right to request confidential treatment consents to its disclosure.

Q. Has Hydro-Québec Distribution employed these methods in its filing?

A. Yes, it has. For example, Hydro-Québec Distribution has publicly disclosed the real levelized prices of the aggregated winning bids. In addition, Hydro-Québec Distribution has disclosed the aggregate real escalation rate and average annual real escalation rate of its natural gas forecast. Moreover, it has also disclosed HQP's pricing (except the terms related to the option provisions), since HQP has consented to the public disclosure of this information. And while temporal limitations on confidential treatment may be appropriate in some cases,

time limits would not be appropriate under the circumstances presented here since there are pending and planned future competitive procurements and the harm to be protected against involves future competitive procurements.

Q. What specific harm to Hydro-Québec Distribution and its customers would arise if the exercise dates and premium provisions associated with Hydro-Québec Distribution's options to defer the contract start dates were publicly disclosed?

A. If fuel and power prices are low, it may be more economic for Hydro-Québec Distribution to exercise the contract deferral option or options if it can acquire less expensive power from another source or sources for the period or periods of the options. If potential future suppliers knew of the specific option premiums and exercise date provisions, especially in the case of the HQP contracts where they would also have access to the specific contract pricing provisions, their competitive behavior vis-à-vis Hydro-Québec Distribution would likely be affected. There would be a tendency for potential suppliers to propose pricing that would slightly undercut the effective cost of HQP's (or TCE's) power, after taking into consideration the cost of exercising the option deferral, rather than offering their best price in the absence of information on Hydro-Québec Distribution's effective cost of alternative supply. Since the level of power

purchase costs directly affects rates paid by Hydro-Québec Distribution's customers, the impact would be adverse to ratepayers.

If demand is lower than expected, Hydro-Québec Distribution would have a choice between (a) exercising one or more deferral options or (b) buying power from HQP and/or TEC and selling power on a wholesale basis. If potential buyers were to know the effective cost of Hydro-Québec Distribution's supply, after taking into consideration the impact of not exercising the deferral option, it could affect Hydro-Québec Distribution's negotiating posture in a market with relatively few potential buyers. Again, Hydro-Québec Distribution's negotiating power would be adversely affected. Since the level of power sale resale revenue directly affects rates paid by Hydro-Québec Distribution's customers, the impact would be adverse to ratepayers.

Q. Is there a relationship between efforts to structure calls for tender in a manner to obtain power at the lowest reasonable cost and regulatory policy on confidentiality of information pertaining to calls for tender?

A. In my opinion, there is such a relationship. In structuring a competitive bidding process, it is best to provide bidders with sufficient information regarding the needs, desires and preferences of the distribution company to enable bidders to structure proposals that best meet those needs, desires and

preferences. For example, the distribution company should be explicit regarding the size and type of generation sought, length of contract term, required and desired optionality around dispatchability and start dates, appropriate siting from an interconnection standpoint, and price structure parameters (e.g., use of indices). At the same time, in my opinion, it is best practice that certain information critical to the evaluation process, such as the forecasting of the economic consequences of using important indices and the mechanics of the detailed evaluation process, should not be disclosed to bidders.

For the first category of information—competitive bidding design parameters—disclosure to bidders contributes positively to bidders submitting their best bids to meet the buyer’s needs and wants. In contrast, disclosure of the second category of information—internal evaluation mechanics and assumptions—provides a basis for bidders to determine how they could best maximize profits—and price—while still submitting a winning bid. The absence of such information focuses bidders’ efforts on submitting their best, and lowest, bid.

In order to maintain the integrity of this meritorious call for tenders process, it is important that the detailed evaluation and pricing information not be publicly disclosed in the regulatory proceeding that itself concludes the process. At the

same time, the information in the first category described above should be freely disclosed, as Hydro-Québec Distribution has done.

Q. Does this conclude your testimony?

A. Yes, it does.