

RÉGIE DE L'ÉNERGIE

DEMANDE RELATIVE A LA MODIFICATION DES TARIFS
ET CONDITIONS DES SERVICES DE TRANSPORT
D'HYDRO-QUÉBEC A COMPTER DU 1ER JANVIER 2009

DOSSIER : R-3669-2008

RÉGISSEURS : M. RICHARD CARRIER, président
Mme LUCIE GERVAIS
M. JEAN-FRANÇOIS VIAU

AUDIENCE DU 2 MAI 2011

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DENISE TURCOT
sténographe officielle

R-3669-2008
2 MAI 2011

COMPARUTIONS

Me JEAN-FRANÇOIS OUIMETTE,
procureur de la Régie

REQUÉRANTE :

Me ÉRIC DUNBERRY et
Me MARIE-CHRISTINE HIVON et
Me LAURENCE GÉVRY-FORTIER,
procureurs de Hydro-Québec Transporteur (HQT)

INTERVENANTS :

Me DENIS FALARDEAU,
procureur de Association coopérative d'économie
familiale de Québec (ACEF)

Me PAULE HAMELIN,
procureure de Énergie Brookfield Marketing inc.
(EBMI)

Me GENEVIÈVE PAQUET,
procureure de Groupe de recherche appliquée en
macroécologie (GRAMÉ)

Me ANDRÉ TURMEL et
Me PIERRE-OLIVIER CHARLEBOIS,
procureurs de Newfoundland Labrador Hydro (NLH)

Me LOUISE CADIEUX,
procureure de Ontario Power Generation

Me ANNIE GARIEPY,
procureure de Regroupement national des conseils
régionaux de l'environnement du Québec (RNCREQ)

Me DOMINIQUE NEUMAN,
procureur de Stratégies énergétiques et Association
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atmosphérique (SÉ-AQLPA)

Me HÉLÈNE SICARD,
procureure de Union des consommateurs (UC)

Me JEAN-FRANÇOIS GIRARD,
procureur de Union des municipalités du Québec (UMQ)

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1 EN L'AN DEUX MILLE ONZE (2011), ce deuxième (2e)
2 jour du mois de mai,

3
4 LA GREFFIÈRE :

5 Veuillez prendre place, s'il vous plaît.

6 LE PRÉSIDENT :

7 Bonjour à toutes et à tous. Madame Guilhermond,
8 pour le protocole d'ouverture.

9 LA GREFFIÈRE :

10 Protocole d'ouverture. Audience du 2 mai 2011,
11 dossier R-3669-2008, phase 2, demande relative à la
12 modification des Tarifs et conditions des services
13 de transport d'Hydro-Québec à compter du 1er janvier
14 2009. Poursuite de l'audience.

15 LE PRÉSIDENT :

16 Alors, la Régie reprend ses travaux dans le dossier
17 mentionné par madame Guilhermond, soit la demande du
18 Transporteur de modifier ses tarifs de transport.

19 Nous allons reprendre aujourd'hui avec
20 l'audition de la preuve de Terre-Neuve. Dans un
21 premier temps, nous allons tenir le débat sur la
22 réponse à l'engagement et les positions des parties.

23 Maître Hivon.

24 Me MARIE-CHRISTINE HIVON :

25 Bon matin, Monsieur le Président, Madame, Monsieur

1 les Régisseurs. Alors, oui, effectivement, nous
2 avons pris bonne note de votre lettre relativement
3 au débat sur l'engagement 16 ce matin.

4 Et ce débat-là contient véritablement deux
5 étapes. Il y a une question de pertinence et une
6 question de confidentialité. Nous avons informé
7 maître Turmel ce matin que, sur la question de la
8 confidentialité, malheureusement, nous attendions
9 encore des confirmations du côté du Producteur.
10 Nous n'en savons pas plus pour l'instant, nous
11 espérons que nous recevrons ces confirmations
12 rapidement.

13 Alors, il y avait deux possibilités, peut-
14 être de nous entendre d'abord sur la question de la
15 pertinence et ensuite, sur la question de la
16 confidentialité.

17 J'ai compris de maître Turmel qu'il
18 souhaitait ce matin procéder avec sa preuve et que
19 le débat complet pourrait se tenir plus tard
20 aujourd'hui ou demain ou mercredi, si nécessaire,
21 que ça n'avait pas d'impact et qu'il souhaitait
22 procéder avec sa preuve ce matin.

23 Alors, je vous sou mets la situation dans
24 laquelle nous nous trouvons, mais également, la
25 possibilité qu'on tienne le débat complet un petit

1 peu plus tard cette semaine.

2 LE PRÉSIDENT :

3 Maître Turmel.

4 Me ANDRÉ TURMEL :

5 Bonjour, Monsieur le Président, bonjour aux
6 Régisseurs. André Turmel pour NLH.

7 Alors, effectivement, dans le contexte où
8 ma collègue l'explique ce matin, les vérifications
9 d'HQT n'étant pas terminées, eux devant discuter
10 avec HQT ou les entendre, je crois, ou vouloir faire
11 entendre des témoins, nous sommes prêts à procéder
12 ce matin.

13 Nos gens sont là, notre expert américain
14 est là, monsieur Bennett est là. Nous, on veut
15 procéder avec la preuve de NLH et on pourra,
16 j'imagine, en trois jours être capable de trouver
17 peut-être à la fin du tiers du temps pour faire ce
18 débat ensemble, tout en même temps.

19 Donc, nous sommes prêts à procéder sur la
20 preuve.

21 Me MARIE-CHRISTINE HIVON :

22 Et évidemment, de notre côté, dans la mesure où ça
23 convient à la Régie, on vous tiendra informés dès
24 que nous aurons les confirmations que nous
25 attendons.

1 LE PRÉSIDENT :

2 Un instant.

3 Alors, la Régie va accueillir la demande.
4 Nous allons procéder avec l'audition de la preuve.

5 Cependant, la Régie s'étonne qu'il y a
6 maintenant près de deux semaines où la demande du
7 Transporteur a été formulée de suspendre l'audition
8 pour peut-être vérifier si les témoins seraient
9 nécessaires ou pas pour traiter de la question de la
10 confidentialité.

11 La Régie s'attendrait à ce que, au plus
12 tard, demain matin, la Régie ait la position du
13 Transporteur.

14 Me MARIE-CHRISTINE HIVON :

15 Je vous entends, Monsieur le Président. Mon client
16 m'indique qu'on a déployé beaucoup d'efforts et nous
17 avons constaté également qu'il y avait énormément
18 d'efforts de déployés, mais malheureusement, c'est
19 la situation dans laquelle on se trouve.

20 Je vous entends et le plus rapidement
21 possible, on va vous revenir sur cette question-là.

22 LE PRÉSIDENT :

23 Très bien. Donc, la Régie invite maître Turmel.

24 Me ANDRÉ TURMEL :

25 Bonjour, Monsieur le Président. Alors, voici

1 maintenant donc venu le temps de passer à une autre
2 étape, celle de la preuve de Newfoundland Labrador
3 Hydro, intervenante dans le présent dossier.

4 J'ai déjà demandé à monsieur Gilbert
5 Bennett de prendre place dans un premier temps pour
6 faire sa courte présentation et, par la suite,
7 immédiatement dans l'ordre, le docteur Sinclair
8 prendra - voilà, il s'assoit - prendra place à ses
9 côtés pour faire également sa présentation.

10 Et je comprends que, par la suite, ils
11 pourront être contre-interrogés ensemble.

12 Alors, Madame la Greffière, donc monsieur
13 Bennett et docteur Sinclair étant présents,
14 pourriez-vous procéder à l'assermentation, s'il vous
15 plaît.

16 9H12

17 LA GREFFIÈRE :

18 Docteur Robert Sinclair, voulez-vous vous lever,
19 s'il vous plaît? Affirmez-vous solennellement de
20 dire la vérité, toute la vérité, rien que la vérité.
21 Dites: Je l'affirme.

22 Dr ROBERT SINCLAIR :

23 I so swear.

24 LA GREFFIÈRE :

25 Veuillez s'il vous plaît donner vos nom, profession

1 et adresse d'affaires?

2 Dr ROBERT SINCLAIR :

3 My name is Robert Sinclair. I am a Vice President
4 at Potomac Economics. We are located at FairFax,
5 Virginia.

6 LA GREFFIÈRE :

7 Merci. Monsieur Gilbert Bennett, voulez-vous vous
8 lever, s'il vous plaît? Affirmez-vous
9 solennellement de dire la vérité, toute la vérité,
10 rien que la vérité. Dites: Je l'affirme.

11 M. GILBERT BENNETT :

12 I so swear.

13 LA GREFFIÈRE :

14 Veuillez, s'il vous plaît, donner vos nom,
15 profession et adresse d'affaires.

16 M. GILBERT BENNETT :

17 My name is Gilbert Bennett. I'm Vice President with
18 Nalcor Energy and Newfoundland Labrador Hydro. My
19 business address is in St.John's, Newfoundland and
20 Labrador.

21 LA GREFFIÈRE :

22 Merci.

23 PANEL NLH

24 INTERROGÉS PAR Me ANDRÉ TURMEL :

25 Merci, Madame la greffière.

1 Alors, dans un premier temps, Monsieur le
2 Président, je vais déposer le *curriculum vitae* de
3 monsieur Bennett tout simplement pour fins de
4 compréhension et nous coterons ce C.V. professionnel
5 de monsieur Bennett sous la cote C-13.42. Je
6 comprends que nous en étions à C-13.41. Alors,
7 normalement c'est la pièce C-13.42.

8 PIÈCE C-13.42 :

9 *Curriculum vitae* de Gilbert Bennett.

10 Me ANDRÉ TURMEL :

11 Alors, pendant que madame la greffière passe ce
12 C.V., je vais procéder à l'identification de
13 différents documents avec monsieur Bennett.

14 Q.1 Good morning, Mr. Bennett. How are you?

15 R. Good morning.

16 Q.2 Good morning. So, I will then ask you to
17 first recognize some documents that were
18 filed, pre-filed by NLH in this hearing.

19 First, this is the C-13.21,
20 Information Request Part 1 coming from NLH
21 dated July 13, 2010. The second one being
22 the evidence file by NLH dated September
23 23rd, 2010. This is C-13.24.

24 And lastly, the third document was
25 the answer by NLH to some of the

1 information requests made by HQT dated
2 October 13, 2010. This is C-13.28.

3 Do you recognize these documents,
4 Sir?

5 R. Yes, I do.

6 Q.3 Mr. Bennett, so you recognize these
7 documents. And were these documents
8 prepared under your supervision and do
9 they represent NLH's position in that
10 file?

11 R. Yes, they do.

12 Q.4 Do you adopt these pre-filed documents as
13 they were filed as NLH written evidence
14 and information requests in the current
15 hearing?

16 R. Yes.

17 Q.5 Alors, Monsieur le Président, ces derniers
18 documents sont produits formellement au
19 dossier. Nous avons parlé de C-13.42 pour
20 le C.V., C-13.21, C-13.24 et C-13.28.

21 So, Mr. Bennett, would you please
22 present NLH position?

23 R. Thank you, Mr. Turmel.

24 Good morning to the Chair and
25 Commissioners. My name is Gilbert

1 Bennett. I'm Vice President of the Lower
2 Churchill Project with Nalcor Energy and
3 an officer of Newfoundland and Labrador
4 Hydro of course. Hydro is a subsidiary of
5 Nalcor Energy.

6 And I've held this position now since
7 May 2005. My background, I have a
8 bachelor of engineering degree in
9 electrical engineering from Memorial
10 University of Newfoundland and I guess our
11 interest in this proceeding is as a
12 customer, a transmission customer of HQT
13 and certainly as a result, we have an
14 active interest in HQT's Open Access
15 Transmission Tariff and its administration
16 here in Québec.

17 And we strongly support the adoption
18 of transmission tariff provisions by
19 TransÉnergie that are consistent with FERC
20 Order 890 and the associated subsequent
21 orders.

22 Of course, you know, an important
23 part of FERC's motivation in those orders
24 was to provide for a more comparable Open
25 Access Tariff to limit the potentiation for

1 undue discrimination and certainly anti-
2 competitive conduct.

3 And in looking at those objectives,
4 there are certain provisions that are of
5 particular importance to us because
6 they're designed to increase transparency
7 in the administration of open access and
8 particularly we're interested in
9 coordinated, open and transparent planning
10 process.

11 Certainly, the adoption of these
12 provisions and combination with strong,
13 independent interpretation and enforcement
14 by the Régie is essential for all
15 transmission customers and it's important
16 for all stakeholders to have confidence
17 that Hydro-Québec is providing
18 transmission service in a non-
19 discriminatory manner.

20 Confidence in the open access system
21 here in Québec is at stake in this
22 proceeding and it's for this reason that
23 we're intervening in this case.

24 The Régie's ruling in this case will
25 mark a significant milestone in the

1 evolution of open access transmission here
2 in Québec. And as a current and future
3 user of the HQT system, my company will be
4 directly affected by the outcome of these
5 proceedings and I'm pleased to be able to
6 participate in this proceeding.

7 Certainly, my primary focus here
8 today is in presenting the perspective of
9 a transmission customer on the need for
10 adoption of a transmission process that is
11 consistent with the nine principles that
12 were outlined by FERC in Order 890 and
13 particularly in Attachment K of the pro
14 forma tariff.

15 I'm accompanied today by our expert
16 witness Dr. Robert Sinclair who will
17 testify in the bulk of our evidence today
18 and I'll briefly identify some of the
19 other issues that Dr. Sinclair will
20 address at the end of my presentation.

21 I think, at the outset, I think it's
22 important to recognize that I'm not
23 presenting here today as a planning expert
24 but I'm testifying from our experience, my
25 own personal experience as a customer who

1 has experienced the system impact study
2 process and the complaint process and from
3 our research of the public record
4 regarding HQT's proposed planning process.

5 And as a result of our experience, we
6 do see the importance of having HQT adopt
7 a coordinated, open and transparent
8 planning process that's consistent with
9 the principles outlined by FERC.

10 And the nine principles, of course,
11 that they reference are as follows: the
12 notion of coordination, openness,
13 transparency, information exchange,
14 comparability, dispute resolution,
15 regional participation, economic planning
16 studies and cost allocation that follow.
17 And if those are followed, they should
18 reduce the instances of undue
19 discrimination.

20 I'm certainly not going to go into
21 the specifics that ultimately led to our
22 previous complaint here and before the
23 Régie unless the Chair and the
24 Commissioners would like me to do so. But
25 I'm certain that having a planning system

1 that was based on FERC's principles would
2 have helped alleviate certainly the
3 problems that we experienced in the past
4 and on a go-forward basis could greatly
5 reduce the potential for after-the-fact
6 disputes that are both time-consuming and
7 costly for all parties involved.

8 It has been demonstrated in the
9 numerous exchanges of FERC quotes in the
10 filed testimony, you know, FERC has cited
11 the need for coordinated planning to
12 address both transmission investment
13 problems as well as discrimination. And,
14 for example, the Commission specifically
15 stated that this lack of coordination,
16 openness and transparency results in
17 opportunities for undue discrimination and
18 transmission planning.

19 Without adequate coordination and
20 open participation, market participants
21 have no means to determine whether the
22 plan developed by the transmission
23 provider in isolation is unduly
24 discriminatory.

25 With respect to the presence or

1 absence of congestion on a transmission
2 system, this isn't a pre-requisite for the
3 potential for discrimination or the need
4 for the principles that were outlined in
5 Attachment K. Dr. Sinclair will elaborate
6 and further detail on the flaws of this
7 position.

8 And, in fact, I understand that HQT's
9 witness Rose agreed that congestion wasn't
10 a pre-requisite for discrimination.

11 So, in the absence of transparency,
12 a customer can be disadvantaged in
13 multiple ways, regardless of whether there
14 was congestion or not on the system, for
15 example, with overbills for service that
16 they requested or the conduct of less than
17 optimal studies or unfair treatment in the
18 service request process.

19 According to HQT witness, Mr. Rose,
20 he noted that the current planning process
21 is functionally equivalent and therefore
22 meets the goals of coordinated, open and
23 transparent planning as mandated in Order
24 890 and that therefore HQT does not need
25 to adopt an Attachment K in its pro forma

1 tariff.

2 We don't agree with that conclusion.

3 Now, the processes that were cited by
4 Mr. Rose, they all serve very legitimate
5 functions as do comparable processes in
6 the United States but they don't fulfil
7 fundamental requirements of a
8 comprehensive Open Access Transmission
9 Planning process. And this deficiency has
10 been mitigated by FERC with the adoption
11 of Attachment K.

12 Here in Québec, NLH has participated
13 in three investment approval files. So,
14 R-3669-2009, R-3715-2009 and currently,
15 the ongoing process with respect to R-
16 3757-2011. We've participated in the
17 system impact study process. We've
18 participated in the complaint processes
19 with HQT and the Régie as well as the rate
20 hearing process.

21 And from my perspective, none of
22 those processes, either separately or in
23 combination, provide a meaningful
24 engagement in the early stages of the
25 planning process. And FERC was very clear

1 on the importance of coordination. The
2 customers must be included in the early
3 stages and not nearly... excuse me, not
4 merely given an opportunity to comment on
5 transmission plans that were developed in
6 the first instance without their input.

7 In fact, in the investment file R-
8 3669-2009, when NLH attempted to have HQT
9 and the Régie look at options other than
10 those submitted by HQT, the Régie denied
11 this request on the grounds of the choice
12 of options considered in an investment
13 file as the prerogative of HQT.

14 So, with respect to openness, you
15 know, it should be noted that all of NLH's
16 request for intervention in these
17 investment files were initially challenged
18 by HQT on the grounds that NLH's
19 applications were insufficient or were
20 outside of the regulatory framework
21 established for this type of file.

22 Now, while the objections were
23 ultimately turned down by the Régie, HQT's
24 initial rejection of our participation all
25 contradict the position that these

1 processes are part of a coordinated, open
2 and transparent transmission planning
3 process here in Québec.

4 In the SAS process, you know, we
5 weren't provided with details on different
6 options, considered to address our service
7 request. We were provided with some
8 working papers after the final report was
9 completed and we were certainly not
10 provided with sufficient information to
11 replicate the results of the study. We
12 were provided with the end results of the
13 study and the process from my perspective
14 didn't meet the principle of transparency.

15 My experience with the complaint
16 process is that they are highly
17 adversarial and don't necessarily mean to
18 contribute to meeting any of the nine
19 principles identified by FERC. In fact,
20 significant time is spent on admissibility
21 of evidence in the context of a dispute
22 after the fact and doesn't provide for
23 meaningful participation, transparency or
24 information exchange.

25 It's also important to note that the

1 majority of the processes that are
2 identified as functional equivalent to
3 Attachment K, are all focused on
4 individual cases that there is no review
5 of a broad, coordinated, open and
6 transparent planning process.

7 So, with respect to the strategic
8 planning hearings, this is a process to
9 review plans which have already been
10 prepared and again doesn't entail early
11 involvement of stakeholders. Then looking
12 at the environmental assessment process,
13 I have first hand experience in the joint
14 federal and provincial processes for
15 environmental assessment in Newfoundland
16 and Labrador, again, I don't see this as
17 a form for transmission planning as
18 contemplated in Order 890. Certainly the
19 focus of an environmental assessment is to
20 consider an undertaking or a project that
21 has already been selected and it has been
22 selected and proposed by a proponent and
23 this suggests that the planning studies
24 and the screening of alternatives has
25 already been completed and that a concrete

1 project or plan has been proposed.

2 And in this process, it would seem to
3 me that any participation by transmission
4 customers would clearly be after the fact,
5 as the planning has already been
6 considered.

7 As a transmission customer, you know,
8 meaningful participation in a transmission
9 planning process means that there is
10 engagement in the development of the
11 transmission plan itself, in the study
12 plan, engagement in the development of the
13 base case and assumptions, and the review
14 of the study results.

15 And critical access or the critical
16 aspect rather of this process is that it
17 should involve an exchange of information
18 and that the process should facilitate a
19 common understanding and provide the
20 customer with confidence in the results of
21 the planning process, such that the entire
22 process is open and transparent and
23 reduces therefore the potential for
24 discriminatory treatment of non-affiliated
25 transmission customers.

1 9H27

2 In terms of any planning process, I
3 think it's fundamental that the
4 identification of alternatives, the
5 screening of these alternatives to
6 ultimately identify the best option for a
7 specific requirement is carried out and
8 this could be achieved, you know, with a
9 planning committee that includes
10 customers, stakeholders and neighbouring
11 transmission providers.

12 And certainly this was suggested by
13 FERC in Order 890, that the group then
14 could provide or offer an open or
15 transparent forum for customers and other
16 interested parties to review and provide
17 feedback on planning alternatives for the
18 transmission system.

19 And this process could inform
20 stakeholders about the system, increase
21 the transmission provider's understanding
22 of stakeholders' perspectives on those
23 alternatives and provide an opportunity to
24 review the study results and to offer
25 feedback on the planning alternatives that

1 are proposed.

2 And I'm not aware of any functional
3 equivalent process here in Hydro-Québec's
4 proposed process.

5 So, in assessing HQT's position
6 regarding the adequacy of these existing
7 procedures, in meeting the objectives of
8 Attachment K, it's useful to consider
9 these procedures against a standard that
10 was articulated in the Order, that the
11 information sharing and consultation
12 process should enable customers, other
13 stakeholders or an independent third party
14 to replicate the results of planning
15 studies and thereby reducing incidents of
16 after-the-fact disputes regarding whether
17 planning has been conducted in an undue
18 discriminatory fashion.

19 And it's our position that this
20 standard is not met under the existing
21 processes that have been identified by
22 HQT. And to prevent undue discrimination
23 in the provision of open access
24 transmission service in Québec, it's
25 essential that a planning process

1 consistent with the principles for
2 coordinated, open and transparent
3 transmission planning be adopted by HQT
4 and that this process be included in the
5 HQT open access transmission Tariff.

6 So, in conclusion, I would like to
7 thank you for the opportunity to present
8 our perspective on the importance of the
9 adoption of coordinated, open and
10 transparent planning process here in
11 Québec that is consistent with the
12 principles mandated by FERC to mitigate
13 the potential for undue discrimination in
14 the provision of a transmission service.

15 And Dr. Sinclair now will provide his
16 expert assessment on the adequacy of the
17 current planning process in Québec in
18 meeting the standard. He'll also present
19 NLH's positions on the following issues
20 that are of importance to us, Attachment
21 1, Attachment C-1 rather, and the ATC
22 calculation, designation of resources to
23 serve Québec native load, generation
24 imbalance charges and credit worthiness.

25 Thank you very much.

1 Q.6 Thank you, Mr. Bennett.

2 So now, we're turning to Dr.
3 Sinclair. Good morning, Dr. Sinclair.

4 Dr ROBERT SINCLAIR :

5 R. Good morning.

6 Q.7 We'll just do a couple of recognition of
7 documents first. We'll go through the
8 several pieces of evidence that were pre-
9 filed by you, Dr. Sinclair. So, first,
10 I'll ask you to recognize a series of
11 documents and after that you'll tell me if
12 those are at your cognizance.

13 So, first, let's go with C-13.4 which
14 is Information Request number 1 to HQT
15 dated May 15, 2009. The second document
16 is C-13-6 NLH which is Information Request
17 number 2 of HQT dated June the 5th, 2009.
18 Then there was the C-13.7 NLH which was
19 your first expert written testimony dated
20 June the 10th, 2009. Then C-13.13 which
21 were answers to Information Requests 1 and
22 2 to the Régie dated July 3rd, 2009. Then
23 C-13-21, those were Information Requests
24 to HQT, there were some prepared by Mr....
25 some directed at Mr. Rose and Hanser, this

1 is dated July 13, 2010. Then C-13-24
2 which was your September 23rd, 2010
3 amended written testimony. Then the last
4 document, if I'm not mistaken, was the
5 October 13, 2010 which is C-13-28 NLH,
6 which was part 2 of your answer to
7 Information Request from HQT.

8 So, sir, are you recognizing those
9 documents?

10 R. Yes.

11 Q.8 And have you prepared all of these
12 documents, information requests to HQ and
13 the Régie, answers to information
14 requests, your expert's report and your
15 amended expert's report, did you prepare
16 all of this yourself?

17 R. Yes.

18 Q.9 And I understand that your amended expert
19 report and its content reflect your
20 professional opinion in this file?

21 R. Yes.

22 Q.10 With respect to your amended report, did
23 you perform the analyses it contains?

24 R. Yes.

25 Q.11 There's no change to it, there's no

1 correction to it?

2 R. No.

3 Q.12 No.

4 Alors, Monsieur le Président, nous
5 produisons... je ne vous répéterai pas l'ensemble
6 des documents mais... en preuve ces divers documents
7 pour valoir la preuve de l'expert, Dr Sinclair, dans
8 le présent dossier, pour valoir son témoignage écrit
9 en l'instance.

10 Alors, ceci étant fait, on va, si vous
11 voulez, procéder au voir-dire pour la reconnaissance
12 de l'expertise de Dr Sinclair dans le dossier. Par
13 lettre du 2 juin 2009, la pièce C-13-5, nous avons
14 indiqué à l'époque que nous demandions une
15 reconnaissance d'expert de Dr Sinclair de la façon
16 suivante, et je cite, c'était dans la lettre du 2
17 juin:

18 « *Energy economist*
19 *specializing in*
20 *wholesale electricity,*
21 *market monitoring and*
22 *transmission system*
23 *monitoring.* »

24 Et là, je me rends compte qu'avant d'aller plus loin
25 je vais peut-être passer à la fois le C.V. corrigé

1 et déposer le C.V. corrigé de Dr Sinclair, excusez-
2 moi, qui serait... et dans un deuxième temps, on
3 va... bon, le C.V. de Dr. Sinclair, nous allons le
4 coter déjà, Madame la Greffière, à moins qu'il n'ait
5 été déjà coté, sauf erreur, mais sous C-13-43.

6 PIÈCE C-13.43 :

7 *Curriculum vitae* du Dr Robert Sinclair.

8 Me ANDRÉ TURMEL :

9 Et je vais déposer immédiatement, puisque la
10 présentation du C.V. de monsieur Sinclair fait
11 partie de la présentation PowerPoint, la copie
12 papier de la présentation PowerPoint effectuée
13 aujourd'hui par Dr Sinclair, que l'on cotera plus
14 tard là, mes collègues pourront, le cas échéant,
15 faire... j'ai appris des notes transcrites là, pour
16 éviter qu'il y ait des redondances dans les débats,
17 donc on cotera cette pièce du PowerPoint à la fin de
18 la présentation de Dr Sinclair, si vous le voulez
19 bien.

20 VOIR-DIRE SUR LES QUALIFICATIONS D'EXPERT DU DR
21 ROBERT SINCLAIR :

22 INTERROGÉ PAR Me ANDRÉ TURMEL :

23 Q.13 So, Dr. Sinclair, we just filed your C.V.
24 but in order for you to get the
25 recognizance of the Régie as an expert

1 witness, would you please present your
2 credentials in relation with this file?
3 And then we'll ask the Régie to recognize
4 you as an expert. Sir?

5 R. Yes, thank you. Good morning. Good
6 morning, Commissioners, President Carrier,
7 Madame Gervais, Monsieur Viau, good
8 morning, *bonjour*. Good morning to the
9 staff and the interpreters and the
10 transmission carrier and also the other
11 intervenors here. And good morning, it's
12 great to be in Montreal again, your
13 beautiful city, it's always great to visit
14 and to be here, thank you.

15 I want to start my presentation by
16 reviewing my credentials. Again, my name
17 is Robert Sinclair. I have a PhD in
18 economics from the University of
19 Pittsburgh where I specialized in
20 industrial organization, antitrust
21 regulations, statistical analysis and
22 microeconomic theory.

23 I have been an energy consultant
24 since 1993 and have provided expert
25 testimony in a number of jurisdictions on

1 a variety of matters relating to matters
2 that arise in this case, including
3 monitoring transmission networks.

4 A substantial part of my work
5 assignments have involved monitoring
6 transmission networks and open access
7 tariff administration. I have also been
8 recognized as an expert by the Régie in a
9 recent complaint case.

10 I am a vice-president of Potomac
11 Economics, as I stated before. Let me
12 talk a little bit about Potomac Economics.
13 It is a consulting firm that is a leader
14 in providing independent market monitoring
15 services. And I want to spend a little
16 time discussing independent market
17 monitoring.

18 Some of you may not be familiar and
19 I think it's important to understand some
20 of the elements of that work in relation
21 to this case.

22 Independent market monitoring arises
23 from FERC-approved monitoring plans, so it
24 is initiated by FERC. And our assignments
25 as market monitors, we are approved by

1 FERC as the market monitors in these
2 various markets. FERC has required
3 independent market monitoring for all
4 multilateral RTO markets in the U.S. and
5 also some bilateral markets for
6 transmission monitoring. And I will
7 discuss the types of market monitoring
8 that occurs in these markets.

9 Independent market monitoring focuses
10 on the design of competitive electricity
11 markets, Market Rules, and also the
12 conduct of market participants. So, in
13 our assignments, we look at both the
14 structure of the market and also the
15 conduct of participants in the market.

16 In multilateral markets, such as the
17 New York ISO and ISO New England, the
18 Midwest ISO, the focus is on centralized
19 market clearing prices and congestion
20 pricing. In bilateral markets, such as
21 Duke Power and some other markets that we
22 monitor in the U.S. are more similar to
23 the Québec system where transactions take
24 place on a bilateral basis as opposed to
25 on a central clearing basis. The focus in

1 those markets is on open access
2 transmission service which, of course, is
3 the key issue in this case.

4 So, let me talk a little bit more
5 about monitoring of bilateral markets.
6 Transmission monitoring services, in our
7 bilateral market monitoring, we are
8 specifically approved by FERC to conduct
9 a variety of main activities and these
10 main activities are monitoring the
11 available transmission capacity, including
12 the calculation of ATC values.

13 We are explicitly required to monitor
14 requests for transmission service and the
15 proper handling of these requests.

16 We also are required to monitor the
17 planning processes and congestion
18 management.

19 So, many of the responsibilities we
20 have in monitoring FERC-approved
21 monitoring plans are issues that arise in
22 this particular case under Order 890.

23 And these are the various assignments
24 we have had in monitoring bilateral
25 markets, basically monitoring transmission

1 systems. I won't go through all of them
2 but I will emphasize PacifiCorp because,
3 in PacifiCorp, we were required to
4 extend... we were required to perform an
5 audit of transmission administration which
6 included an audit of the designation of
7 network resources, the proper use of
8 network transmission service and the
9 limits on information sharing with
10 affiliated generation divisions. So,
11 these issues also are important for the
12 present case.

13 And just quickly I would like to
14 point out that we are the market monitors
15 for New York ISO, the Midwest ISO, ISO New
16 England and ERCOT. And we do some other
17 services for other centralized markets but
18 we are not the market monitor there.

19 But for these RTO markets, we are the
20 market monitor and we are responsible for
21 establishing large systems to monitor the
22 conduct of generators and load-serving
23 entities. We also are required to analyze
24 Market Rules in these markets and to
25 provide periodic reports on the outcomes

1 and structure of these markets.

2 So, that completes my summary of my
3 credentials.

4 Q.14 Thank you, Dr. Sinclair.

5 Alors, Monsieur le Président, à moins
6 qu'il n'y ait des questions de ma... j'ai compris
7 qu'il n'y avait pas de contestation de la
8 qualification d'expert de la part de mes... de
9 quiconque dans le dossier. On a laissé entendre que
10 peut-être qu'il pourrait y avoir des questions. A
11 moins qu'il n'y ait des questions sur ce que l'on
12 vient d'entendre, et je vois mes collègues rester
13 sagement assis, nous allons vous demander...

14 Me ÉRIC DUNBERRY :

15 Disons rester assis, Monsieur le Président.

16 Me ANDRÉ TURMEL :

17 Oui.

18 Me ÉRIC DUNBERRY :

19 Alors, nous n'aurons pas de questions.

20 LE PRÉSIDENT :

21 Merci.

22 Me ANDRÉ TURMEL :

23 Donc, de reconnaître Dr. Sinclair comme expert. Je
24 peux vous répéter:

25 « *Energy economist*

1 *specializing in*
2 *wholesale electricity*
3 *market monitoring and*
4 *transmission system*
5 *monitoring. »*

6 LE PRÉSIDENT :

7 Alors, la Régie accepte la qualification d'expert
8 demandée.

9 Me ANDRÉ TURMEL :

10 Merci.

11 PANEL NLH (Suite)

12 INTERROGÉS PAR Me ANDRÉ TURMEL :

13 Alors, maintenant que, bon, toute la preuve a été
14 déposée en bonne et due forme, tout est reconnu...

15 9H42

16 Q.15 Dr. Sinclair, I will ask now if you can go
17 through your PowerPoint presentation and
18 go on now. Thank you.

19 R. Okay, thank you.

20 I will discuss the various issues
21 that I've testified on, and including some
22 issues that arose on cross-examination.
23 You're welcome to look at the hard copy of
24 the presentation although in some points,
25 especially if you see graphics, you may

1 want to consult the screen because it may
2 be more informative, more clear as you see
3 some of the graphics come up piecemeal as
4 opposed to in a large jumble. So, let me
5 summarize my testimony.

6 FERC issued Order 890 to reform up
7 and access transmission in the U.S. The
8 Order included a *pro forma* Open Access
9 Tariff, this so-called 890 *pro forma* OATT,
10 you know, we'll refer to as the *pro forma*
11 OATT and it refers to the Open Access
12 Tariff that was filed, that was included
13 in the FERC final Order 890.

14 It reflects the minimum terms and
15 conditions of non-discriminatory
16 transmission access.

17 Now, it's important because for HQT,
18 as a transmission that works in New York
19 and New England, HQT must satisfy FERC's
20 reciprocity requirement which requires HQT
21 to offer transmission service that meets
22 the minimum open access conditions
23 established by FERC.

24 Now, for example, if you look at the
25 ISO New England tariff, you'll see there

1 is a specific reciprocity section
2 requiring utilities in Canada to have Open
3 Access Transmission Tariffs available for
4 market participants in the U.S.

5 In addition, HQUS has Market-Based-
6 Rate authority in the U.S. and, in order
7 to retain that Market-Based-Rate
8 authority, it must show that its
9 transmission-owning affiliate has
10 mitigated vertical market power. And one
11 way to do this is to adopt a FERC-
12 compliant OATT.

13 So, accordingly, my testimony
14 evaluates HQT's proposed OATT to determine
15 whether it meets the minimum conditions in
16 Order 890 OATT. That was the mandate that
17 I had in assembling my expert opinion.

18 So, I address four main topics in my
19 testimony. The first is ATC calculations
20 including testimony of HQ witness, Mr.
21 Hanser and the cross-examination of HQT
22 witness, Mr. Clermont.

23 The second topic is the coordinated,
24 open and transparent planning which Mr.
25 Gilbert had introduced just now. And I

1 also addressed the testimony of HQT
2 witness, Mr. Rose.

3 The third topic is imbalance charges
4 and the fourth topic is credit worthiness.
5 The large bulk of my testimony will
6 include these first two topics.

7 So, I will move to the first topic
8 which is ATC calculations.

9 Under ATC calculations I will address
10 four issues. The first is time horizons
11 for ATC calculations; the second is
12 allocation of transmission capacity to
13 native load customers, this is the QCRD
14 issue; the designation of distributor
15 resources, this primarily addresses the
16 HQT witness Clermont who addressed this
17 issue on cross-examination; and finally,
18 I will address data exchange and the HQT
19 proposed harmonization and this was
20 primarily provided by HQT witness Hanser.
21 So, these are the four ATC calculation
22 issues that I will address.

23 So, first, we talk about time
24 horizons. Now, HQT... Order 890 required
25 calculations for three time horizons, the

1 scheduling, operating and planning
2 horizon. So there should be an ATC value
3 for each of these horizons. ATC meaning
4 the available transmission capacity that's
5 for sale in the market.

6 HQT established only equations for
7 the scheduling and real time horizons
8 which were not defined in 890. However,
9 in his Undertaking number 19, HQT-41, HQT
10 has clarified the time horizons for its
11 ATC values and this satisfies this
12 particular concern that I arose in my
13 testimony.

14 So, the next several slides, I won't
15 go through it because they've been
16 rectified by HQT-41 and its undertaking,
17 provided of course the undertaking is
18 carried through. So, I won't talk about
19 Mr. Clermont's testimony and I won't do
20 this comparison here.

21 So, I'll move to the next topic which
22 is native load commitments. So, I think
23 the only way to address this topic is to
24 introduce a little bit of technical
25 language and I'll start with the ATC which

1 is the existing transmission commitments.
2 The existing transmission commitments are
3 commitments on the system that take up
4 transmission capacity and therefore cannot
5 be made available to the market.

6 In general, I'm going to put up this
7 formula because I think, although this is
8 an abbreviated form of it, the ATC or the
9 transmission that's available to the
10 market, and I'm talking about firm
11 transmission here, but there is an
12 equivalent equation for non-firm.

13 So, in its fundamental relationship,
14 the transmission available to the market
15 is going to be equal to the transmission
16 capacity on a given path, net of TRM. We
17 don't need to talk about that but
18 basically NTC refers to the physical or
19 the transmission capacity on the path.

20 Then, from that, you must take away
21 the existing transmission commitments on
22 the path. So, it's a rather simple
23 relationship in Attachment C-1 where HQT
24 sets out its ATC equations.

25 There are some other terms that are

1 included but, for the purposes of our
2 discussion, we don't need to bother with
3 those but there are several other terms
4 that adjust the ATC but are not my concern
5 right here. So, to keep it simple, I'd
6 like to discuss just these major terms.

7 So, as you see, if the ETC is
8 overstated or understated, then the ATC
9 will be understated or overstated,
10 depending on the ETC. So, it's a very
11 simple relationship.

12 If you establish too many existing
13 transmission commitments, there are not
14 enough capacity left for the market.

15 So, when we talk about ETC or the
16 existing transmission commitments,
17 essentially, you have point-to-point
18 reservations on the path and native load
19 commitments on the path. And what I want
20 to talk about are native load commitments.

21 In the Attachment C-1 which is the
22 HQT's attachment for establishing the
23 calculation of available transmission
24 capacity, three types of native load
25 commitments are used in the equations. A

1 QCRD, a QCRND which really stands for non-
2 designated and it's firm, called firm
3 here, and the QCRND, non-firm, but as I
4 will explain, these two, the second and
5 third designations are inconsistent with
6 the *pro forma* 890 OATT because it
7 allocates too much of the firm commitments
8 to the native load usage and I will
9 explain why this is the case.

10 So, first, let me discuss that QCRD
11 which is a legitimate use of firm
12 capacity, QCRD according to Attachment C-
13 1, represents transmission commitments on
14 transmission paths for designated native
15 load resources. So, if he doesn't need a
16 native load resource, the transmission
17 capacity on that path is put aside for
18 that resource. And this is a legitimate
19 use of designated resources. They are
20 allowed to have firm capacity on the
21 paths.

22 And this QCRD is reflected in the
23 firm commitments which is the existing
24 transmission commitments. And as I said,
25 this is consistent with Order 890. So,

1 there is no problem with this designation.

2 Now with the other designations,
3 there is a problem. With the QCRND firm,
4 these are transmission commitments on
5 posted paths for non-designated resources
6 to serve native load. So, these are
7 resources that have not been designated by
8 the distributor as native load resources
9 but they are able to serve native load.

10 Now, as I will explain later, it is
11 possible to use... to have access to
12 native load customers from non-designated
13 resources but it's not a firm commitment;
14 it's a non-firm commitment.

15 So, the key here is, as I highlight
16 here, is that this is transmission
17 commitments for non-designated resources.

18 Now, in C-1, HQT's Attachment C-1,
19 the non-firm... the QCRND firm is placed
20 in firm commitments. So, it's treated as
21 a firm commitment. So, it reduces the
22 firm ATC in the equations but it's a
23 violation of the OATT to set aside network
24 transmission for non-designated resources
25 and you can read that plainly at Section

1 28.4.

2 So, what's going on here is that a
3 reservation that is made from a non-
4 designated resource to serve native load
5 is being assigned, is reducing the firm
6 ATC on the system. And that's in
7 violation of the *pro forma* OATT. Non-
8 designated resource they only have rights
9 to as-available transmission.

10 Now, I'll move to the third
11 designation which is QCRND, non-firm, and
12 this denotes the transmission commitments
13 for non-designated resources again
14 reserved by HQP which is the generator,
15 the HQ generator and again for supplying
16 native load. And again it's for non-
17 designated resources but it's a... this is
18 a violation of FERC comparability because
19 it provides special treatment to HQP. And
20 in accordance with comparability, no party
21 can be provided preferential advantages.

22 Also, it's a violation of HQT's own
23 OATT because Part IV which is network
24 service can only be available to the
25 distributor and it's not allowed that HQP

1 which is not the distributor to a reserve
2 under this Part. So, this is also not
3 consistent with Order 890 and also not
4 consistent with the current OATT.

5 So, let me just talk, summarize.
6 Again, these are two designations that are
7 for non-designated resources and if you
8 read Order 890, 28.4 which I have on the
9 screen, it says:

10 « The Network Customer
11 may use Transmission
12 Provider's
13 Transmission System to
14 deliver energy to its
15 Network Loads from
16 resources that have
17 not been designated as
18 Network Resources.
19 Such energy shall be
20 transmitted, on an as-
21 available basis, ... »

22 So, it cannot be used... it cannot be
23 designated in such a way to use up firm
24 transmission. You see, I highlight here
25 "as-available". It reaches the question

1 on firm.

2 So, the conclusion is that I'm
3 recommending that the Régie should require
4 HQT to revise the proposed tariff to
5 eliminate QCRND firm and QCRND non-firm.
6 Then there should be a single designation
7 used to represent the reservations from
8 non-designated resources. But this should
9 reflect only secondary service in
10 accordance with Section 28.4 of the 890
11 OATT.

12 QCRD itself we don't have a problem
13 with. And it would make, as far as this
14 is concerned, make Attachment C-1
15 consistent with Section 36.3 of HQT's own
16 OATT in that the generator cannot use
17 network service, native load service,
18 excuse me.

19 I think it's important to point out
20 that there were some cross-examination
21 testimony and I am putting up here the
22 exact formulation of the QCRND firm, in
23 particular the existing transmission
24 commitments. There is a lot on the screen
25 but I only want to really point out these

1 two elements that I've circled here. And
2 Mr. Clermont testified and there is the
3 relevant cite on the screen, February
4 11th, 2011 at page 104, he insisted that
5 the QCRND designations were for non-firm
6 service only.

7 However, still in Attachment C-1 is
8 the fact that the QCRND firm is treated as
9 a firm commitment and so reducing the firm
10 ATC. So, there is a conflict between this
11 testimony, this cross-examination
12 testimony and the attachment and this
13 should be resolved as I've explained on a
14 previous slide.

15 Okay. Now, I want to move to the
16 second ATC topic which is *Designation of*
17 *Distributor Resources*. And I address this
18 at pages 8 and 9 of my testimony.

19 So, Order 890 requires network
20 customers to designate network resources
21 so transmission capacity can be set aside
22 for their delivery. We talked about that
23 in my previous section. So, it's
24 important that the transmission provider
25 know what resources are designated so that

1 it can calculate ATC.

2 9H59

3 This issue was raised in a data
4 response. It was also raised by HQT
5 witness, Mr. Clermont, again on February
6 9th, as I indicated above, 2011, pages 107
7 to 111.

8 Accurate resource designations are
9 critical to accurate ATC values. As I
10 said, when you set aside firm transmission
11 for native load resources, you reduce the
12 ATC. So it's important that we get the
13 designations correct. If they're not
14 correct, then ATC could be wrong. If ATC
15 is wrong, then transmission customers may
16 be excluded from the market. And of
17 course, one of the overarching goals of
18 open access is to ensure that transmission
19 customers have fair access to the market.
20 So, it's an extremely important topic.

21 So recall from before the equation
22 that I used, the simplified equation, that
23 we have... ATC is reduced by ETC, existing
24 transmission commitments. So again, if
25 the existing transmission commitments are

1 overstated, then the ATC will be too small
2 and it would be unfair.

3 So, in order to illustrate the
4 problem that we have with the HQT Tariff,
5 I want to put a little diagram up. And
6 this is one of those diagrams that may
7 move a little bit and is best viewed on
8 the screen. So, what I do is I have a
9 physical picture of Québec here and those
10 dotted lines that are coming in at an
11 angle are the transmission path.

12 And then I'm assuming that there's an
13 off-system generator, for example, in
14 Ontario, that's 500 megawatts large. And
15 we're supposing here that 300 megawatts is
16 used to serve native load customers. It's
17 a PPA, it's an agreement to sell part of
18 the unit to serve native load customers.

19 And the other 200 megawatts from this
20 generator is used for third-party sales
21 some place else, in Ontario, say.

22 Now, let's suppose that the capacity
23 coming in on this path is 500 megawatts,
24 just so that we can illustrate the effects
25 of the designation process. So, let's

1 suppose in case 1 that HQD designates the
2 purchase as a distributor resource, so it
3 announces to the transmission provider
4 that: We have a 300-megawatt-purchase
5 power agreement coming into Québec to
6 serve a native load on this particular
7 path. Then the ATC is calculated by
8 taking the transmission path and deducting
9 the existing transmission commitment,
10 which is 300 megawatts, so you have an ATC
11 of 200 megawatts. So, 200 megawatts is
12 still available to the market in this case
13 because HQT designated the off-system
14 purchase of 300 megawatts.

15 Now, let's suppose hypothetically
16 that HQD designates the entire generator
17 as a distributor resource, the 500
18 megawatts. In that case, the ATC is zero
19 and the market is closed, that particular
20 path is closed to the market.

21 So, the point here is that FERC was
22 very concerned about properly designating
23 network resources so that the ATC can be
24 properly calculated. And it's not merely
25 a theoretical problem, Order 890 requires

1 the transmission customers to attest to
2 the designation of network resources.
3 This is in Order 890. This is the
4 relevant sections: 29.2 for new
5 applications for network resources and
6 31.6 requiring it for annual updates to
7 the load and resources.

8 So, this attestation must include a
9 signed statement that each designated
10 resource that the network customer either
11 owns it or has an executed contract. And
12 that the network resources do not include
13 any resources that are committed for
14 third-party sales some place else.

15 So, FERC has recognized the
16 seriousness of accurate designations of
17 resources and so is requiring a legal
18 attestation by the distributor.

19 Now, HQT has recognized some of the
20 attestation principles. So, in section
21 37.1, the distributor is required to
22 attest that none of its resources,
23 designated resources, are committed for
24 third-party sale. But however, it has
25 specifically deleted its attestation that

1 it owns a resource or has purchased
2 generation for the amounts approved by
3 Régie. This is equivalent to the executed
4 contract or the ownership of the resource.
5 Pursuant to an executed contract, you see
6 has been deliberately deleted.

7 So, however, if you look at HQT 29.2,
8 which is « *Network Transmission Service* »,
9 which isn't used in Québec but nonetheless
10 it's in the Tariff, and you compare it to
11 the treatment of attestation in 37.1,
12 which is for the distributor, you see that
13 the network customer is required to attest
14 to its ownership or contract rights to a
15 designated resource, but the distributor,
16 that portion has been deliberately
17 deleted. And Mr. Clermont addresses this
18 on cross-examination, and I'll explain
19 that in a minute. But I wanted to explain
20 now the importance of attestation.

21 So, as we said, I don't know how many
22 times I should put this equation up, but
23 basically, you know, if you designate a
24 resource, then you increase this existing
25 transmission commitment value, then of

1 course you reduce ATC.

2 Now, attestation helps ensure that
3 the transmission customer is not abusing
4 the designation process to retain transfer
5 capability and exclude competitors.
6 Again, this is something that FERC clearly
7 was involved with. I'm not trying to
8 accuse HQ of doing this at this point but
9 this is what FERC was concerned about.

10 And we heard from Régie in a recent
11 decision that HQT itself is not
12 responsible for checking the proper
13 designation of network resources. So, it
14 makes it all the more important that there
15 is some mechanism to ensure that
16 designation is accurate so that ATC is
17 accurate.

18 So, I just want to go quickly back to
19 our picture we had before where we have
20 the generator importing into Québec and we
21 had two cases, one where ATC was 200 when
22 it was properly designated and one when it
23 was zero where it was improperly
24 designated. And I want to ignore for a
25 minute the graphic and explain that.

1 In order for HQT to calculate, in
2 order for the transmission provider to
3 calculate the capacity on the
4 interconnections, it must be told by HQD
5 what portion of the plan is designated, is
6 it 300, is it 500, is it the PPA, is it
7 the resource? HQT cannot verify this
8 itself, as we heard from Régie, that this
9 is something that a transmission provider
10 is not in the business of doing.

11 So, Order 890 introduced the
12 attestation in order to prevent the case,
13 or help to prevent the case, where a
14 resource is improperly designated and the
15 ATC is improperly used up.

16 In fact, FERC has proposed including
17 civil liability which shows the importance
18 that FERC recognizes of accurate resource
19 designations.

20 Now, because of the heritage pool, it
21 becomes a little bit unclear how exactly
22 the attestation should take place in
23 Québec. And in light of Mr. Clermont's
24 cross-examination testimony, I thought it
25 would be important to run through the

1 relationships in Hydro-Québec.

2 So, Hydro-Québec contains HQD as a
3 division and also HQT. So, HQD of course
4 is the distributor; HQT is the
5 transmission provider. Now, if we go back
6 to the example of the off-system purchase,
7 this purchase from non-system resources
8 really is done through the heritage pool
9 structure and HQ is the purchaser in that
10 case. HQT is I think the division that
11 operates that but essentially HQT is the
12 purchaser of that resource from off-
13 system.

14 Of course there's other resources on-
15 system that are used to serve the heritage
16 pool but I want to focus on this off-
17 system purchase since we've been talking
18 about designation and how to treat the
19 off-system purchase. And once HQ
20 purchases the off-system purchase, then
21 the distributor purchases from HQ from the
22 heritage pool essentially, under the
23 heritage pool contract that I'm advised by
24 counsel exists as a result of some
25 legislation. So, there's this internal

1 purchase basically. And then, finally,
2 it's distributed to load.

3 So, these pink arrows show the flow
4 of the power through the system, comes off
5 the system from an off-system purchase by
6 HQ, and then by HQD internally, and then
7 goes to load.

8 Now, I'm going to show you some green
9 arrows which show the information flow.
10 So, when HQ makes the purchase off-system,
11 the information about the designation goes
12 to HQD and HQD reports this to HQT. I
13 think it's section 37.1, there's some...
14 resources are to be designated by the
15 distributor and the transmission provider
16 must know the designation in order to
17 calculate ATC, and then this information
18 then is sent to the market. So, you see
19 these green arrows are information that's
20 exchanged inside the company and which is
21 used to calculate ATC.

22 So, the important thing here is that
23 HQT must understand what the accurate
24 information is about this purchase. So,
25 what they want to do is change the

1 purchase to an information, because
2 there's information in this purchase, and
3 you see...

4 So, what you have is information
5 coming into the system, going through the
6 system, and then back out to the market.
7 And the question is how do we know this is
8 accurate? Of course, FERC recognized this
9 and in the *pro forma* OATT requires an
10 attestation concerning how much of the
11 off-system resource, the designated
12 resource, does the distributor have
13 entitlement to.

14 But according to HQT, and this is Mr.
15 Clermont's cross-examination, this
16 distributor does not make attestation
17 concerning designated resources because it
18 does not own the resources. Or I should
19 clarify, it does not make attestation
20 concerning ownership or elements of the
21 power contract because it does not own
22 resources. Of course, this is related to
23 the discussion I had before that the
24 distributor purchases from the heritage
25 pool and doesn't really own the resources,

1 doesn't have the entitlement to the PPA
2 coming on the system.

3 So, HQT's position is that the
4 distributor doesn't have title to the PPA
5 or the resource so it cannot make the
6 attestation. So, we're left with the
7 situation where the attestation is not
8 being made because of this heritage pool
9 structure.

10 Accordingly, the best way to ensure
11 the attestation is to have, for each
12 designated resource, including resources
13 used to deliver electricity to the
14 heritage pool, HQ itself should attest
15 that it owns the resource or has committed
16 to purchase generation pursuant to a
17 supply contract. So, because HQD really
18 isn't the one making the purchases as
19 designated resources and HQT is the
20 purchaser, HQT should make the attestation
21 that these designations are accurate
22 because ultimately HQ is the one that
23 provides this information to the
24 distributor who then passes the
25 information to the transmitter who then

1 calculates the ATC.

2 So, because of the unique situation
3 here with the heritage pool, the
4 distributor itself is claiming it's not in
5 a position to make the attestation. Then
6 the attestation should be placed with the
7 entity that is familiar with the contracts
8 and the ownership of the resources.

9 Let me point out some further
10 concerns about off-system purchases. I
11 want to point out that the proposed OATT,
12 the HQT Tariff does not conform to Order
13 890 in other critical areas. In Order
14 890-A, it was important that off-system
15 resources report critical information, and
16 I'll just list these for off-system
17 generating resources. HQT should identify
18 the distributor resources off-system,
19 specify that it's off-system, specify how
20 much power the customer has rights to,
21 identify the control area and the delivery
22 points to the system and the transmission
23 arrangements. These five points were
24 taken directly from Order 29.2 and they're
25 not specifically provided for in the HQ

1 OATT and I put them here as candidates for
2 inclusion.

3 10H15

4 Two additional issues on designating
5 distributor resources. Power Purchase
6 Agreements, Order 890 says that there
7 should be a minimal quality to these
8 agreements. In fact, the PPA should have
9 a quality that makes them non-
10 interruptible except if the seller is able
11 to make the purchaser whole, so-called to
12 make-whole liquidated damages PPA
13 requirement.

14 So, the conclusion is that I
15 recommend that Régie endorse this
16 requirement of PPAs. If they are going to
17 be designated, they should make-whole
18 liquidated damages types.

19 The other issue, and this has been
20 talked about a lot, that designated
21 resources should be undesignated when
22 making third party firm sales. There is
23 an attestation, HQT does make an
24 attestation to that effect and we support
25 that. The third party sale should be

1 prohibited and then there should be an
2 attestation and an undesignation of each
3 resource when there is a third party firm
4 sale.

5 Okay. Now, I will move to my fourth
6 point under ATC values and that is the
7 data exchange which is a topic that Mr.
8 Hanser brought up, HQT witness, Mr.
9 Hanser.

10 He testifies... he refers to it as
11 coordination and data exchange and his
12 coordination and data exchange is a so-
13 called harmonization process. Under this
14 process, HQT adopts the ATC value of an
15 adjacent system when that adjacent
16 system's ACT value is lower.

17 So, I address two aspects of this
18 coordination and data exchange.

19 First, although there is some data
20 exchange in this process, it does not meet
21 the Order 890 principles. And second the
22 process can lay to undue discrimination as
23 we've seen in recent cases.

24 So, first, I will discuss why the
25 coordination and data exchange does not

1 satisfy 890 principles. I think it's best
2 illustrated by a table. So, we have HQ's
3 proposed data exchange and we have Order
4 890 data exchange requirements.

5 Mr. Hanser proposes in his
6 harmonization process to exchange firm
7 capacity and also TRM values, sorry,
8 transmission reliability values.

9 But if you review Order 890, you'll
10 see that there is a large number of data
11 exchange, data that should be exchanged
12 under Order 890 which are not included in
13 the proposed data exchange by HQT. These
14 include load, transmission outages,
15 generation outages, base generation
16 dispatch, transmission bookings, ATC
17 frequency, source/sink ID.

18 So, I just see that the proposed
19 process includes only an exchange of a
20 very small subset of the data requested
21 under Order 890.

22 So, let me explain my second problem
23 I have with harmonization as proposed by
24 witness Hanser is that the harmonization
25 is really a second step in coordinating

1 ATC between systems.

2 The first step is that the data
3 should be exchanged between systems and
4 then the ATC is calculated.

5 And this may increase the accuracy of
6 the two ATC values because there is more
7 information going into the process. Both
8 systems know more about the other system
9 and there may be an ability for the ATC to
10 increase in one of the systems and if that
11 increases on the more restrictive of the
12 two systems, then the harmonization
13 process will lead to unlockingly the
14 underlying value of the transmission.

15 So, it's important to exchange the
16 full set of data, then calculate the ATCs
17 and then if there is an harmonization
18 issue, that can be done afterwards.

19 Also, I propose that or I conclude
20 that there should be appropriate
21 safeguards with the HQT harmonization
22 process because if there is a way to use
23 this process to advantage itself, then it
24 could be anti-competitive because HQT has
25 the incentive to allocate the scarce

1 capacity to its sister divisions and
2 exclude competition.

3 And the recent case with
4 harmonization indicated that there was an
5 attempt to allocate the capacity to itself
6 in the case of rollover rights. So, there
7 should be safeguards or some recognition
8 that this type of discrimination cannot
9 occur when the system becomes over-
10 subscribed.

11 Okay. So, now it's my testimony on
12 the ATC values and now I was going to move
13 to my next major topic which is the
14 Attachment K.

15 Me ANDRÉ TURMEL :

16 Monsieur le Président, simplement pour voir avec
17 vous, là, la gestion du temps. Je pense que Dr
18 Sinclair est arrivé à peu près à la moitié. Est-ce
19 qu'il est approprié de prendre une pause maintenant
20 ou de continuer jusqu'à peut-être 11 h, 11 h 15,
21 c'est comme vous voulez, là. J'essaie de voir avec
22 vous.

23 LE PRÉSIDENT :

24 Alors, nous allons prendre une pause de 20 minutes
25 et reprendre à 10 h 40.

1 Me ANDRÉ TURMEL :

2 Merci.

3 SUSPENSION DE L'AUDIENCE

4 10H43

5 REPRISE DE L'AUDIENCE

6 LA GREFFIÈRE :

7 Veuillez prendre place, s'il vous plaît.

8 LE PRÉSIDENT :

9 Reprise de l'audience. Maître Turmel.

10 Me ANDRÉ TURMEL :

11 Merci, Monsieur le Président. Simplement...

12 Q.16 Hello again, Dr. Sinclair. I know that
13 you may want to go back at page 37. I
14 think you want to... there was slight
15 confusion on one of the... on the
16 attestation when you do conclude on
17 attestation maybe you go...

18 R. Yes, I made a mis-statement. I said that
19 HQT should make an attestation but clearly
20 from the slide, I say that Hydro-Québec
21 should make an attestation.

22 Q.17 Yes, and this is page 37, it sounds like
23 it is page 37 on the slide, so, the
24 conclusion on attestation.

25 R. Right.

1 Q.18 Okay, thanks.

2 R. So, we'll continue with my presentation.

3 Now, I'm talking about Attachment K
4 which is the description of the principles
5 associated with coordinated, open and
6 transparent planning.

7 Order 890 called for coordinated,
8 open and transparent planning to
9 facilitate customer participation in the
10 upgrades to the grid.

11 Some of the key ideas are that
12 participation should be early in the
13 process by way of regular meetings,
14 collaborative meetings providing
15 stakeholders, entities with greater
16 information and access to the planning
17 data and the models and to identify
18 specific customer needs and studies.

19 FERC was motivated to open up the
20 planning process to provide for more
21 comparable open access transmission
22 service and to limit the potential for
23 undue discrimination. This is Order 890,
24 at paragraph 426:

25 « To limit the

1 *opportunities for*
2 *undue discrimination*
3 *and to ensure that a*
4 *comparable*
5 *transmission service*
6 *is provided by all*
7 *public utility*
8 *transmission*
9 *providers. »*

10 This is Order 890 at paragraph 435.

11 *« And to provide for*
12 *timely and meaningful*
13 *input and*
14 *participation. »*

15 Meaningful participation early in the
16 process is probably the most important
17 aspect of coordinated, open planning and
18 FERC has a variety of statements in that
19 regard. Customers must be included at the
20 early stages of the development of the
21 plan. This is at Order... paragraph 454.

22 *Planning information*
23 *should enable*
24 *customers to replicate*
25 *planning studies. »*

1 This is the order at paragraph 471,
2 extremely important.

3 « Stakeholders be
4 given the right to
5 request specific
6 studies. »

7 This is the Order at paragraph 547.

8 So, there is plenty of evidence that
9 FERC was very motivated to introduce these
10 processes for important reasons.

11 And so the principles of the planning
12 process are contained in Attachment K.
13 HQT did not provide an Attachment K
14 claiming that the FERC's planning process
15 was primarily aimed at deficient
16 infrastructure in the U.S. and HQT claimed
17 that the existing investment authorization
18 process in Québec was sufficient for Open
19 Transmission Planning.

20 I should note that HQT also presented
21 Mr. Rose to expand on some of the reasons
22 for not having the Attachment K.

23 Now, what I've explained in my
24 testimony and what I'm going to summarize
25 here now is that the Order 890 Planning

1 Reforms were not limited to concerns about
2 infrastructure. You see, there are many
3 quotes. For instance, FERC at paragraph
4 84, an Order 890 planning was to ensure
5 comparable transmission service. In Order
6 at paragraph 422:

7 « We cannot rely on
8 the self-interest of
9 transmission providers
10 to expand the grid in
11 a non-discriminatory
12 manner. »

13 The Order at paragraph 425:

14 « Without open
15 participation, market
16 participants have no
17 means to determine
18 whether the
19 transmission plan is
20 unduly
21 discriminatory. »

22 So, I think there is plenty of evidence
23 that FERC was interested in non-
24 discrimination as a principle in open
25 planning.

1 Now, I want to continue with the HQT
2 justification for its position and that
3 was put forth by HQT witness, Mr. Rose.
4 He expresses his opinions relating to
5 Appendix K, it should be Attachment K.

6 Mr. Rose presents testimony in two
7 main documents. He first produced a
8 rebuttal testimony, it's HQT-12, document
9 1, and he also produced an extended
10 response to questions 6.5 and 6.6 of IR
11 number 1 of the RNCREQ and UC that they
12 had requested. That's HQT-8, document
13 6.1. So, these are the two pieces of
14 testimony that Mr. Rose submitted to
15 support HQ's position. And I would
16 discuss those now.

17 He addresses two broad issues, the
18 motivations for coordinated planning and
19 whether the existing processes in Québec
20 achieve the objectives of coordinated
21 planning.

22 So, first, we'll talk about the first
23 of these main topics that he brings up and
24 that is the motivations for Attachment K.
25 He identifies two motivations and I agree

1 that these are the two motivations that
2 are presented by FERC, improving system
3 deficiencies - and this was the
4 infrastructure motivation that HQT had
5 already identified prior to Mr. Rose's
6 submitting testimony - and also preventing
7 undue discrimination.

8 And I agree with Mr. Rose that these
9 are the two elements that the FERC
10 recognized in producing the policies with
11 Attachment K.

12 So, with respect to system
13 deficiencies, he provides an extensive
14 discussion on this topic, talking about
15 the lack of U.S. transmission investment,
16 talking about U.S. transmission
17 congestion, talking about the lack of U.S.
18 coordination.

19 Now, with the second motivation,
20 there is very little said in his testimony
21 and what is said and which I will discuss,
22 in my eyes, does not satisfy the non-
23 discrimination principle that motivated
24 Order 890.

25 So, let me talk about the

1 discrimination principle in Order 890.

2 So, what Mr. Rose said was that FERC
3 was concerned that U.S. transmission
4 providers would use transmission planning
5 to discriminate against unaffiliated
6 companies. I agree with FERC and I agree
7 with Mr. Rose that that was one of FERC's
8 concerns.

9 So, if the principles in Attachment
10 K are not adopted by HQT, how are FERC's
11 Attachment K non-discrimination objectives
12 satisfied? So, in other words, since
13 there are two motivations for Attachment
14 K, if we don't have it, how do we satisfy
15 these objectives?

16 And what I explain next is that this
17 was not addressed to Mr. Rose's testimony,
18 either in his testimony or his responses
19 to data requests.

20 So, how does HQT address FERC's
21 discrimination concern? The only
22 reference to non-discrimination that I was
23 able to find in HQT's filing was the
24 statement by Mr. Rose that it is necessary
25 to understand whether there is significant

1 and recurring congestion when assessing
2 the potential for discrimination. So, I
3 took that to imply that, in order for
4 discrimination to occur, then there must
5 be congestion. So, congestion causes the
6 possibility for discrimination and
7 therefore, the implication is that if
8 there is no congestion, there is no need
9 to address the discrimination principle
10 under Attachment K.

11 So, the question then is Mr. Rose's
12 assertion correct that congestion is
13 necessary for discrimination?

14 And we find that, in order to assess
15 this theory, we ask Mr. Rose what types of
16 discrimination are possible. We asked
17 this in information requests and he said
18 that one type of discrimination is
19 favouring affiliated generation sources in
20 structuring the grid.

21 On cross-examination, Mr. Turmel
22 asked him whether this type of
23 discrimination can occur when there is no
24 congestion. And Mr. Rose agreed that
25 there is a possibility of this type of

1 discrimination without congestion.

2 We also asked him what other types of
3 discrimination are possible. He said that
4 a transmission provider can offer service
5 that is not comparable to what it provides
6 itself or affiliated companies or deny
7 service to others. And I agree that this
8 is a type of discrimination.

9 Mr. Turmel asked him about this and
10 Mr. Turmel said:

11 « Can these
12 theoretical actions
13 that we just discussed
14 by transmission
15 providers occur in the
16 absence of congestion
17 again? »

18 And Mr. Rose agreed that this type of
19 discrimination can occur in the absence of
20 congestion.

21 In a similar way, Mr. Rose identified
22 allocating upgrade cost as being
23 discriminatory. And again, Mr. Turmel
24 asked him whether this is possible in the
25 absence of congestion and Mr. Rose said:

1 Yes, it's possible in the absence of
2 congestion.

3 So, recall that Mr. Rose testified
4 that Attachment K is motivated by
5 deficient U.S. infrastructure and
6 potential discrimination.

7 But Mr. Rose says that congestion
8 gives rise to discrimination or he
9 suggests that in his response to data
10 request. But on cross-examination, he
11 admitted that discrimination can occur
12 without congestion. So, without the HQT
13 out containing the principles of
14 Attachment K, we do not know how FERC's
15 discrimination concerns are addressed.
16 And so one of the two major motivations
17 for Attachment K is not addressed in these
18 proceedings, and that is how can these
19 discrimination principles that are part of
20 the motivations for Attachment K be
21 addressed if there's no attachment K.

22 10H55

23 So, I also note that Mr. Rose
24 discusses congestion on the HQT system in
25 some detail. But I want to point out that

1 he has not discussed planning horizon
2 congestion which is really the main
3 motivation for Attachment K, that is how
4 to prevent congestion in the planning
5 process, how to anticipate congestion, how
6 to resolve congestion through upgrades.
7 And that was not addressed in his
8 testimony. So now I just explained how
9 the motivations for Attachment K have not
10 been satisfied because of the absence of
11 an Attachment K planning process.

12 Now, I want to discuss Mr. Rose's
13 testimony on the existing processes in
14 Québec that are put forth as a
15 satisfactory substitute for the 890
16 planning processes.

17 So, as I said before, Mr. Rose
18 addresses two broad issues, the first was
19 the motivations for coordinated planning
20 and the second was whether the existing
21 processes achieve this objective, and
22 that's the topic I want to address now.

23 So, as I said, Mr. Rose testified
24 that, and I'll quote « *TransÉnergie*
25 *already offers coordinated, open and*

1 *transparent planning that is comparable to*
2 *Attachment K ».* And he talks about the
3 Régie investment process, rate cases
4 before the Régie, OATT process before the
5 Régie, filing guidelines before the Régie,
6 environmental impact, NPCC planning
7 process, the HQT's Code of Conduct and
8 coordination among transmission providers
9 and regulators. So, he addresses a long
10 list of processes. And also coordination
11 with neighbouring systems. So, I want to
12 discuss these processes and explain why,
13 in my opinion, these are not adequate for
14 the coordinated planning that FERC
15 envisions in Order 890.

16 First of all, the processes cited by
17 Mr. Rose are generally processes that have
18 comparable counterparts in the U.S. And,
19 of course, FERC was aware of these
20 existing processes in the U.S. but still
21 acted to strengthen the planning
22 requirements, implying that the existing
23 processes were not adequate to advance
24 open access objectives.

25 As a result, because the Québec

1 processes are comparable, these processes
2 taken together will not achieve the
3 effects that Order 890 intended to
4 achieve. But even aside from the fact
5 that FERC had recognized these processes
6 exist throughout the electric industry,
7 it's important to go through each one to
8 explain why they don't accomplish the
9 objectives.

10 First of all, the main processes that
11 Mr. Rose cites as being used to accomplish
12 the coordinated planning are mainly
13 contested processes that involve hearings
14 and discovery and far more interaction
15 among participants. The other processes
16 are merely informational or establish
17 limited or no collaboration. So, as a
18 general matter, the processes mentioned
19 are either contested or they're not
20 involved enough.

21 None of them allow early involvement
22 in the process and none of them involve
23 economic planning, which is the reduction
24 of congestion or the addition of lines in
25 order to achieve economic objectives as

1 opposed to reliability. Consider the
2 after-the-fact processes cited by Mr.
3 Rose, these are the Régie investment
4 process, the rate cases before Régie, the
5 OATT process before Régie, the
6 consultation process on environmental
7 impact. Now, these are all after-the-fact
8 processes but the FERC is quite clear that
9 after-the-fact processes were not
10 satisfactory. And FERC says:

11 « The absence of
12 coordinated planning
13 means that disputes
14 over access and
15 discrimination can
16 occur primarily after
17 the fact because
18 there's insufficient
19 coordination and
20 transparency between
21 transmission providers
22 and their customers
23 for the purposes of
24 planning. »

25 And that's the order at paragraph 425.

1 So, it's very clear that FERC
2 recognized these after-the-fact processes
3 but recognized them as being inadequate.

4 And in that same paragraph, FERC
5 emphasized that:

6 « There is a
7 continuing incentive
8 of transmission
9 providers to favour
10 themselves and their
11 affiliates in the
12 provision of
13 transmission
14 service. »

15 So, these after-the-fact processes really
16 were inadequate in FERC's view.

17 One of the problems with after-the-
18 fact contested hearings is that the
19 information request process rely upon
20 transmission customers or information
21 requests are relied upon by transmission
22 customers to gather information about the
23 planning process. And the IR process,
24 which is common across many jurisdictions
25 and in many contested hearings, is not as

1 efficient as a collaborative process as
2 envisioned by Order 890. The IR process
3 often becomes adversarial. The IR process
4 also separates experts, requiring
5 attorneys or others as intermediaries.
6 So, you have an inability of experts to
7 talk to each other directly.

8 For instance, in this particular
9 case, based on NLH and other intervenor
10 requests, the Régie rendered two
11 decisions, this was D-2010-080 and D-2010-
12 120, directing HQT to answer certain IRs.
13 So, you see that it even requires
14 sometimes the Commission getting involved.

15 And consider another example, as I
16 put in my testimony, of a request in this
17 case where the request was simply asking
18 about the HQT's filing of its OATT, asking
19 whether the Part IV of the HQT OATT is
20 meant to correspond to Part III of the *pro*
21 *forma* OATT, as far as establishing minimum
22 conditions in terms of service. And there
23 was an answer back saying that the Régie
24 ordered HQ to add Part IV to serve native
25 load customers.

1 So, you see, there was an answer to
2 the request saying that the Régie ordered
3 Part IV to be added to the Tariff but the
4 question was not about who ordered it to
5 be added but whether it's meant to
6 correspond to Part II of the *pro forma*
7 OATT.

8 So, you see, this process, this
9 particular request, didn't get us very
10 far. And so this is very typical of IR
11 requests, not just in Québec but also in
12 other jurisdictions, there's a resistance
13 sometimes to providing just a minimum
14 amount of information.

15 So, let me talk about some of the
16 processes particularly. Mr. Rose cites
17 the Régie investment process as the
18 ability for customers to participate in
19 coordinated planning. But consider the
20 following three recent investment
21 proceedings, two from 2009 and one from
22 2011. For the process R-3696-2009, it was
23 an investment, HQ was making investments
24 of \$260 million. And I'm told that NLH
25 requested to intervene and HQT objected.

1 Likewise in R-3715-2009, NLH
2 explained its interest in the transmission
3 network and again HQT objected claiming
4 that issues were before the Régie in
5 another proceeding. NLH eventually was
6 allowed in but it was still an after-the-
7 fact process, so even though they got in,
8 it's not early in the process.

9 And likewise in a very recent case,
10 3757, the so-called Romaine investment
11 file with an amount of 1.8 billion, NLH
12 asked for intervenor status but again HQ
13 objected. And this case was particularly
14 important to NLH given that HQ proposes to
15 extend transmission facilities near the
16 Labrador border.

17 So, what you see here is at least
18 three examples of cases where NLH sought
19 to become involved in the process but HQ
20 objected. And to me, that's not an
21 indicator of an open process. The 2011
22 case may be the most important because
23 this open process debate in this hearing
24 has been, in this file, has been ongoing
25 now for several years and there still

1 doesn't seem to be an attempt to open up
2 the process.

3 So, just a few remarks on the OATT
4 processes, Mr. Rose cites the processes in
5 the open access Tariff as evidence of an
6 open planning process. He mentions
7 generation interconnection studies and
8 system impact studies. I just note that
9 these are services that are available to
10 a transmission customer that has very
11 specific requirements; they're not an open
12 process where customers can organize and
13 determine what is best for the grid. And
14 I think notable is paragraph 543 of Order
15 890 where the FERC says:

16 « The Commission
17 believes such
18 coordinated studies
19 can, for system
20 planning purposes, be
21 more beneficial than
22 studies performed on a
23 request-by-request
24 basis. We also find
25 that they are

1 *consistent with the*
2 *requirement to provide*
3 *comparable service. »*

4 So, obviously, FERC does not view these
5 individual studies as being satisfactory
6 to the 890 principles. And also system
7 impact studies can be quite expensive.
8 And anyway, all the other processes were
9 known to FERC when they decided anyway to
10 go ahead and expand and deepen the
11 coordinated planning principles.

12 The Northeast Power Coordinating
13 Council planning processes, all major
14 utilities belong to this organization or
15 to one of its sister organizations which
16 make up the North American Electric
17 Reliability Council, the NERC. So, the
18 main focus of this is reliability and
19 economic and market issues are not really
20 emphasized.

21 So, first of all, it doesn't really
22 address economic studies. Obviously, it's
23 available to everybody else in North
24 America which FERC is well aware of. And
25 there's really no explanation of how HQT's

1 membership provides anymore benefit to
2 transmission customers than provided to by
3 the U.S. members. In other words, FERC
4 was well aware that U.S. utilities belong
5 to this organization but do not see it as
6 a way to open the process up to market
7 participants.

8 Finally, on the environmental impact,
9 Mr. Rose cites this as a coordinated
10 planning, as a substitute for coordinated
11 planning, but really, his description of
12 it is really a formal process, much like
13 the contested hearings. It does not
14 appear to provide a collaborative
15 arrangement that's envisioned in Order
16 890. And it addresses issues that are
17 really far removed from the economic
18 market issues that are the focus of Order
19 890, relying mostly on environmental
20 questions, important questions but not
21 ones that are brought up on Order 890.

22 HQT's Code of Conduct is mentioned in
23 Mr. Rose's testimony but I don't believe
24 that can be interpreted as supporting
25 coordinated planning. It's really only a

1 reference to non-discrimination
2 principles. And I also note that HQT's
3 form of vertical separation in which there
4 are divisions within HQ is the weakest of
5 all possible functional models of
6 separation.

7 11h09

8 In the U.S., most utilities have
9 stronger separation between transmission
10 and the rest of the utility, including in
11 some cases divestiture of generation or
12 membership in RTOs and some utilities that
13 retain the vertical structure have
14 independent coordinating monitors.

15 And FERC noted at paragraphs 4 and 5
16 and the RTO/ISO planning tend to be more
17 coordinated and open than vertically-
18 integrated utilities.

19 So, in my opinion, the Code of
20 Conduct provides no assurance that HQT is
21 meeting the requirements of Order 890.

22 Finally, the coordination among
23 transmission providers, regulators and
24 adjacent systems, Mr. Rose confines
25 himself to transmission regulation within

1 Québec, ignoring the AC interconnection
2 with Labrador, especially important
3 because HQT and NLH have been involved
4 together in a number of complex issues
5 involving this interconnection and it's
6 not appropriate to ignore it when
7 addressing coordinated planning. It's
8 5,000 megawatts large.

9 So, that completes my testimony on
10 coordinated planning. Now, I have two
11 shorter sections. The first is imbalance
12 charges that I address to my testimony.

13 Imbalance charges apply when a
14 generator produces more or less than its
15 scheduled amount. This is necessary to
16 keep the system in balance and prevent
17 generators from leaning on each other.
18 It's consistent with Order 890.

19 In my testimony, I brought up the
20 point that HQT had initiated an agreement
21 with IESO in Ontario that limited the
22 HQT's imbalance requirements for
23 generators in Ontario and this raised
24 concerns about whether such an agreement
25 would be available to other neighbouring

1 utilities.

2 It is also... and the agreement
3 raises questions about how imbalance
4 charges will be applied. Under Schedule
5 9 of the 890 OATT, the transmission
6 provider must offer imbalance when
7 transmission service is used to deliver
8 energy from a generator located within its
9 own control area. But the HQT's proposed
10 OATT uses this term « synchronized »
11 instead of control area and this is
12 inconsistent with Order 890.

13 And it expands the application of
14 imbalance charges to generators located
15 outside of the Québec control area and, as
16 a result, violates the basic construct of
17 balancing. We note here that Churchill
18 Falls is on the Labrador system and the
19 Labrador and Québec systems are
20 synchronized. So, it's not clear how this
21 term « synchronized » is intended here.

22 And my conclusion is generator
23 imbalance should apply only to generators
24 located within the HQT control area.
25 System to system imbalances should be

1 treated as inadvertent flows between
2 systems and should be settled accordingly.
3 So, there should be an inadvertent flow
4 arrangement between the control areas as
5 opposed to a generator imbalance.

6 Okay. Finally, my last topic is
7 credit worthiness. And I simply made two
8 recommendations explained in my testimony
9 that HQT should modify its credit
10 worthiness procedures to reduce its
11 discretion including its criteria for
12 setting and adjusting credit limits and a
13 requirement for written explanation for
14 any changes in credit levels or collateral
15 requirements and I discuss that in my
16 testimony. I won't go into much detail
17 here. It's just to state them.

18 So, I thank you for your attention.

19 Me ANDRÉ TURMEL :

20 Q.19 Thank you, Dr. Sinclair.

21 Monsieur le Président, donc ça conclut la
22 portion présentation de la preuve de NLH et de son
23 expert, docteur Sinclair. Simplement pour madame la
24 greffière nous allons coter la pièce PowerPoint du
25 docteur Sinclair C-13.44, présentation PowerPoint du

1 docteur Sinclair.

2 PIÈCE C-13.44 :

3 Présentation PowerPoint de docteur Robert Sinclair.

4 Me ANDRÉ TURMEL :

5 Alors, à ce stade-ci maintenant, donc les témoins de
6 NLH, Dr Sinclair, sont prêts à être contre-
7 interrogés.

8 LE PRÉSIDENT :

9 Merci, Maître Turmel. Maître Dunberry.

10 Me ÉRIC DUNBERRY :

11 Alors, Monsieur le Président, bon matin,
12 Madame la régisseuse, Monsieur le régisseur Viau.

13 Alors, tout à fait, nous pouvons débiter
14 tout de suite le contre-interrogatoire du panel.

15 Je mentionnerai un commentaire introductif
16 concernant des dates pour la reprise des contre-
17 interrogatoires pour Brookfield. Alors, on a eu
18 beaucoup d'échanges avec la Régie et également avec
19 Brookfield et j'ai, en fait, deux messages
20 principaux. Le premier, c'est que nous reprendrons
21 le 9 mai, tel qu'indiqué à la Régie lors de la
22 dernière journée d'audition, donc nous serons
23 disponibles les 9, 10 et 11 mai prochains.

24 Malheureusement, je serai peut-être non
25 présent le 9. Je tente toujours de me libérer mais

1 j'ai compris qu'il était impossible pour les gens de
2 Brookfield d'être disponibles pour le 12 et nous
3 voulons évidemment tous procéder et terminer à
4 l'intérieur d'un même bloc.

5 Alors, au risque d'être absent, maître
6 Hivon pourra reprendre le flambeau, ce qui pourra
7 dire que le contre-interrogatoire de monsieur Roach
8 sera suspendu jusqu'à mon retour le lendemain et
9 maître Hivon pourra débiter ses propres contre-
10 interrogatoires.

11 LE PRÉSIDENT :

12 Très bien.

13 CONTRE-INTERROGÉS PAR Me ÉRIC DUNBERRY :

14 Q.20 Good morning, Mr. Bennett, Mr. Sinclair.
15 We will be conducting these examinations
16 in English. We will start with you, Mr.
17 Bennett. In fact, I meant, Mr. Sinclair,
18 I apologize. I was looking at Mr.
19 Bennett, but I was thinking of Mr.
20 Sinclair.

21 So, Mr. Sinclair, I would ask you to
22 take a copy of your report. I have your
23 presentation. But I will ask you to take
24 a copy of your report. And I'm using a
25 report with revision marks so it is your

1 revised report amended on September 23rd,
2 2010. And it's the report that contains
3 the additional evidence underlined with
4 revision marks so we can follow the
5 changes that were made.

6 You indicated when you testified
7 earlier that this report still reflects
8 accurately your views and opinions on the
9 issues that it addresses. Is that
10 correct?

11 M. ROBERT SINCLAIR :

12 R. Yes.

13 Q.21 Are you the sole author of this report,
14 Mr. Sinclair, or were you working with a
15 team?

16 R. I'm the sole author.

17 Q.22 And if we look at page 1 of your report,
18 the Table of Contents, and your
19 presentation followed more or less that
20 same Table of Contents, we see that you
21 were asked to consider a limited number of
22 issues, this Phase 2 hearing considers 16
23 different topics but you were asked to
24 limit yourself to the various issues that
25 we see here on the Table of Contents. Is

1 that accurate?

2 R. I think I limited myself as opposed to

3 being asked. I was asked in general to

4 look at economic issues associated with

5 the proposed tariff in light of Order 890.

6 Q.23 And at the end of the day, you decided to

7 only address those issues that are listed

8 on that Table of Contents?

9 R. Yes.

10 Q.24 You didn't feel that the other issues were

11 part of your own expertise or because you

12 didn't feel that the other issues were

13 deserving a presentation by yourself?

14 R. I think it was more of a time concern. I

15 think I identified issues that were the

16 most important. I developed them and

17 reconsidered whether there was time to do

18 more.

19 Q.25 So, it was a time constraint issue?

20 R. As always.

21 Q.26 Okay. Now, if we look at page 3, lines 5

22 to 7, you described the purpose of your

23 testimony by referring to the following:

24 « *The purpose of my*

25 *testimony is to*

1 *determine whether*
2 *certain key provisions*
3 *of the revised HQT*
4 *OATT conform to or are*
5 *superior to the*
6 *provisions of the pro*
7 *forma OATT contained*
8 *in Order 890. »*

9 That was your mandate, I assume?

10 R. Yes.

11 Q.27 And was that mandate given to you verbally
12 or in writing?

13 R. I think there is something in writing but
14 I think most of the discussion is verbal.

15 Q.28 I would like to ask you to provide us with
16 a copy of all the exchange, written
17 exchanges that you had with NLH defining
18 your mandate in this hearing as
19 Undertaking number 1 for this witness and
20 this intervener?

21 Me ANDRÉ TURMEL :

22 Tout simplement pour spécifier, l'engagement il est
23 clair, je pense, mais mon confrère mentionne tous
24 les documents échangés. Je comprends que c'est les
25 documents relatifs au mandat simplement.

1 Me ÉRIC DUNBERRY :

2 À la définition du mandat, oui.

3 Me ANDRÉ TURMEL :

4 D'accord. Merci.

5 ENGAGEMENT #1:

6 Provide a copy of all written exchanges between Dr.
7 Sinclair and NLH defining Dr. Sinclair's mandate in
8 this hearing.

9 Me ÉRIC DUNBERRY :

10 Q.29 If we now move to Section 2 of your report
11 on ATC coordination, starting at page 7,
12 under Section 2 entitled *Consistency and*
13 *Transparency of ATC Calculations*, when we
14 go through those pages 7, 8 and we can do
15 this now, if you look at page 7, pages 8,
16 9, 10, up to 12, and if we go to page 34
17 as well where you actually filed a
18 response to Mr. Hanser's report, page 34,
19 page 35, 36, until page 40, we see very
20 little reference to the evidence in chief
21 filed by Hydro-Québec TransÉnergie in this
22 Phase 2 except for references to Mr.
23 Hanser's report to the actual OATT and to
24 Schedule 1. Is that correct?

25 R. I don't know how he would... what do you

1 mean by very little?

2 Q.30 Well, if we look at page 7 and the
3 following, we don't see references to the
4 exhibits, to the response to requests for
5 information. There are some references.
6 We can go through the list if you want,
7 but there is very little reference to the
8 actual evidence in chief. We're obviously
9 looking at this report as of September
10 23rd, 2010 and I was wondering why there
11 is so little reference to HQT or the
12 interveners evidence in chief on ATC
13 coordination?

14 R. I don't know. I mean, I don't testify
15 that there's very little reference to HQT.
16 So, I don't know how to answer your
17 question.

18 Q.31 Sorry, what was your point?

19 R. It's not really my testimony that I did
20 not refer to HQT references. So, I don't
21 know how to answer your question.

22 Q.32 Well, no, I'm looking at your report and,
23 in this report, page 7 to 12, and we can
24 do the exercise together if you want, I
25 don't find in your report references,

1 footnotes, reference to the actual
2 evidence on ATC coordination. There were
3 exchanges of documents, exhibits, requests
4 for information, undertakings were made to
5 answer questions. I was just wondering
6 whether you were provided with copies of
7 the evidence in chief filed by HQT on ATC
8 coordination?

9 R. Oh! yes. Yes, I was.

10 Q.33 You were. Could you provide us with a
11 list of all the documents that were
12 provided to you by your client and on
13 which you relied to draft this Section 2,
14 pages 7 to 12 and pages 34 to 40 and that
15 you actually relied on? So, in fact,
16 there are two lists, I guess, those you
17 were provided with and those that you
18 actually relied on for this section on ATC
19 transparency and consistency. That would
20 be Undertaking number 2.

21 Me ANDRÉ TURMEL :

22 Juste pour bien comprendre également ici. Donc,
23 l'engagement 2, ces pages-là reliées simplement au
24 dossier qui est présenté à la Régie, la preuve de
25 HQT présentée à la Régie et non pas des documents

1 externes non liés au dossier de HQT ou non liés à
2 ces pages-là. Donc, c'est restrictif, là. Ce n'est
3 pas d'une largeur inconnue. C'est limité simplement
4 et tout nous ramène simplement à la preuve de HQT
5 dont il est fait question à ces passages-là, c'est
6 exact?

7 Me ÉRIC DUNBERRY :

8 Monsieur le Président, je pensais que l'engagement
9 était assez précis.

10 Me ANDRÉ TURMEL :

11 Je veux juste m'assurer que je comprends bien votre
12 engagement.

13 Me ÉRIC DUNBERRY :

14 Je ne voudrais pas le répéter parce que j'aurais
15 peur de ne pas le répéter de la même manière et de
16 modifier l'engagement qui a déjà été formulé mais je
17 pense avoir indiqué, et je me référerai davantage
18 aux notes sténographiques qu'à mon sommaire actuel,
19 mais je pense avoir référé aux documents qui ont été
20 communiqués par la partie NLH à son expert, monsieur
21 Sinclair, présumément la preuve au dossier dans la
22 phase 2 mais peut-être autre chose, je ne le sais
23 pas, et sur la base desquels documents monsieur
24 Sinclair a préparé les pages 7 à 12 et 34 à 40.

25 Me ANDRÉ TURMEL :

1 D'accord. Merci. C'est plus clair.

2 LE PRÉSIDENT :

3 Très bien.

4 ENGAGEMENT #2:

5 Provide a list of all documents provided to Dr.
6 Sinclair by NLH on which he relied to draft Section
7 2, pages 7 to 12 and 34 to 40.

8 11H25

9 Me ÉRIC DUNBERRY :

10 Q.34 Now, I think I did ask you that question
11 last time we met, Mr. Sincliar, but do you
12 read French? I don't recall the answer.

13 R. No.

14 Q.35 You don't. So, I assume you were not able
15 to read any of the evidence drafted in
16 French unless it was actually translated
17 for your purpose?

18 R. I didn't rely on any French documents
19 unless it was translated.

20 Q.36 So, that answers part of my question, you
21 did not read any French document in
22 respect to this hearing?

23 R. Well, I mean, I would scan the French
24 documents, I mean everybody knows a little
25 bit of Latin-based languages, so you can

1 see, you know, a lot of English words show
2 up so you could see perhaps some areas
3 which you might want to have translated.

4 Q.37 I would like to ask you as well, as an
5 undertaking, to provide us a list of the
6 documents that were translated for you for
7 purposes of this report and on which you
8 relied to prepare the entire report, not
9 just Section 2 because I won't be asking
10 the same question three times, but for
11 purposes of your report, providing us with
12 a list of the documents that were
13 translated for purposes of your report.
14 So, that would be undertaking number 3.

15 ENGAGEMENT #3 :

16 Provide a list of the documents translated for Dr.
17 Sinclair on which he relied to prepare his report.

18 Me ÉRIC DUNBERRY :

19 Q.38 Now, just to be complete about this, I
20 don't see anywhere in your report or in
21 your client's evidence a list of the
22 documents that were actually submitted to
23 you. Am I mistaken? Is there a list
24 somewhere of the documents you actually
25 consulted or reviewed for this report?

1 R. I don't think there's a list that was put
2 together for that purpose.

3 Q.39 Do you have any recollection of what you
4 received from your client for this report?
5 A general description of what you
6 received.

7 R. Oh yes. Yes, I received the filing of
8 course, the HQT exhibits. And that's what
9 comes to mind mostly but I would have to
10 check again my files.

11 Q.40 So, you received HQT's exhibits?

12 R. Yes.

13 Q.41 Those translated I assume?

14 R. I would have to check.

15 Q.42 Were you provided with a general
16 description of our client's proposal?
17 Let's refer to, for instance, HQT-1,
18 document 1, it's the overall presentation
19 made by Hydro-Québec in support of this
20 proposal. Do you recall seeing that?

21 R. Yes.

22 Q.43 Was it translated?

23 R. I think parts of it were translated.

24 Q.44 So, this will be on your list. Do you
25 recall any other exhibits that you can

1 refer to?

2 R. There were some transcripts.

3 Q.45 Transcripts of witnesses testifying in

4 this hearing?

5 R. Yes.

6 Q.46 But that was after September 23rd, 2010,

7 I assume?

8 R. Yes.

9 Q.47 So, you did not rely on transcripts for

10 your report, right?

11 R. No.

12 Q.48 No. Anything else?

13 R. Anything else what?

14 Q.49 Any other exhibits you can recall

15 reviewing?

16 R. Let's see. I mean the Tariff, the FERC

17 Orders. I mean, exhibits to Mr. Rose and

18 Mr. Hanser, I reviewed those. But I can't

19 recall really.

20 Q.50 You can't recall. To make this simpler

21 and accelerate matters, I will provide you

22 with a question in the form of an

23 undertaking, because some of the exhibits

24 perhaps have more weight than others, more

25 relevance to your report. So, I would ask

1 you, by way of an undertaking, to verify
2 whether you were provided with a
3 translated copy of the following exhibits,
4 and I'll simply list them for purposes of
5 the transcript, HQT-1, document 1; HQT-2,
6 including Schedules C and C-1; HQT-8,
7 document 1; HQT-8, document 2, documents
8 5 and 6; HQT-29, documents 1, 2, 3,
9 revision 3, 5 and 6, 8; including HQT, as
10 well, HQT-29, document 3.4. And I would
11 ask you to confirm whether you were
12 provided with translations, they're all in
13 French, whether you were provided with a
14 translation of any of these exhibits, and
15 if so, confirming which ones were actually
16 translated for your review. Is that
17 correct?

18 R. I understand.

19 ENGAGEMENT #4 :

20 Verify whether Dr. Sinclair was provided with
21 translated copies of exhibits HQT-1, document 1;
22 HQT-2, including Schedules C and C-1; HQT-8,
23 documents 1, 2, 5, 6 and 8; HQT-29, documents 1, 2,
24 3, revision 3, 5 and 6; HQT-29, document 3.4; and
25 confirm which ones were translated for his review.

1 Me ÉRIC DUNBERRY :

2 Q.51 Now, do you recall reviewing any written
3 submissions filed by any interveners? As
4 you know, many interveners filed evidence
5 on ATC consistency and coordination. Do
6 you recall reading or being provided with
7 any of the evidence filed by any of the
8 interveners?

9 R. I remember seeing something but I can't
10 remember which ones it was.

11 Q.52 Do you recall seeing something in French?
12 Do you recall any translation of any of
13 the interveners' evidence being provided
14 to you?

15 R. I would have to check, I don't recall
16 sitting here.

17 Q.53 You don't recall. You cannot say yes or
18 no today, that's your answer?

19 R. Whether I saw other interveners'
20 testimony? I can't recall. There's a
21 couple of files that I was looking at, I
22 can't recall. I definitely looked at
23 Interveners but I can't recall if it was
24 this file or another one.

25 Q.54 But again, just so that there's no

1 ambiguïté, I'm not referring to
2 testimonies, I'm referring to material
3 prior to the filing of your report. We
4 understand each other on this, is that
5 correct?

6 R. I'm not sure I understand.

7 Q.55 You understand that I'm asking you to
8 identify whether or not... to answer
9 whether or not you actually reviewed
10 evidence filed by any of the other
11 intervenors...

12 R. I understand that.

13 Q.56 ... in support of your report. And you
14 cannot today recall and say: Yes or no, I
15 did review or I did not review, you have
16 to verify your file?

17 R. I have to go back and look.

18 Q.57 Now, were you present...

19 LE PRÉSIDENT :

20 Juste pour...

21 Me ÉRIC DUNBERRY :

22 Oui?

23 LE PRÉSIDENT :

24 Est-ce que c'est dans quel numéro d'engagement
25 sommes-nous rendus...

1 Me ÉRIC DUNBERRY :

2 Oui, Monsieur le Président, vous avez bien raison
3 parce que...

4 LE PRÉSIDENT :

5 ... pour pouvoir faire des...

6 Me ÉRIC DUNBERRY :

7 ... j'ai tendance à oublier. Alors, Madame...

8 LA GREFFIÈRE :

9 On était rendu à 4.

10 Me ÉRIC DUNBERRY :

11 Oui. Alors, il y a eu quelques engagements depuis
12 le 3. Je vais demander à maître Hivon de me suivre
13 de très près. Nous sommes à 5, je pense.

14 Me ANDRÉ TURMEL :

15 Mais je pense que ça allait bien jusqu'à maintenant
16 de les identifier proprement. On avait fait 4, 4
17 est la longue liste de la preuve que vous avez
18 donnée. Et là, vous avez conclu avec le témoin en
19 disant... bien, lui, il faudrait qu'il vérifie mais
20 il n'y a pas eu de demande d'engagement. Peut-être
21 le faire formellement avec le numéro pour qu'on vous
22 suive bien. Donc, on serait à 5.

23 Me ÉRIC DUNBERRY :

24 Oui. So, the undertaking number 5... en fait, je
25 vais le faire en français... serait de vérifier si

1 le témoin a reçu et révisé des éléments de preuve
2 déposés au dossier par un des intervenants et sur la
3 base desquels il aurait préparé son rapport du 23
4 septembre 2010. Et je ne me limite pas ici à la
5 question de l'ATC.

6 ENGAGEMENT #5 :

7 Vérifier si Dr Sinclair a reçu et révisé des
8 éléments de preuve déposés au dossier par un des
9 intervenants et sur la base desquels il aurait
10 préparé son rapport du 23 septembre 2010.

11 Me ÉRIC DUNBERRY :

12 Q.58 Mr. Sinclair, were you in attendance on
13 October 18 and 19 and on February 10 and
14 11 when Mr. Clermont and Mr. Hanser
15 testified on ATC coordination issues?

16 R. I remember being here for those February
17 dates. I would have to check whether I
18 was here for the October dates.

19 Q.59 So again, as an undertaking, I would ask
20 you to verify and confirm whether you
21 attended the hearings on October 18 and
22 19, 2010, assuming... and I think these
23 are the dates during which Messrs.
24 Clermont and Hanser testified on this
25 issue.

1 R. I think these are getting long so I think
2 I've kind of lost track of details. Will
3 someone give these to me? Is there going
4 to be some kind of formal document that...

5 Q.60 Yes.

6 R. Okay.

7 Q.61 You will receive a copy of the list and
8 your counsel, maître Turmel, will make
9 sure you get that list as well.

10 ENGAGEMENT #6 :

11 Verify and confirm whether Dr. Sinclair attended at
12 the hearings of October 18 and 19, 2010.

13 Me ÉRIC DUNBERRY :

14 Q.62 Now, there was a confidential hearing, à
15 *huis clos* as we say in French, on ATC
16 coordination issues, that was held I
17 believe on February 11, 2011 and it was
18 confidential because it dealt with some
19 confidential information. I am informed
20 that you did not participate, you did not
21 attend that actual hearing. Is that
22 something you can confirm to us?

23 R. I do remember something like that, not
24 going to that part of the hearing, but I
25 can't remember precisely what it was

1 about.

2 Q.63 Do you remember signing a confidentiality
3 agreement that would have allowed you to
4 receive documents and attend that hearing?
5 I'm told you did not sign a
6 confidentiality agreement by the way so
7 you know...

8 R. That might be true, yes, I can't remember
9 but you're probably right.

10 Q.64 You don't recall signing or not signing
11 this?

12 R. I can't remember.

13 Q.65 You cannot remember?

14 R. I can't remember. Cannot.

15 Q.66 Do you sign a lot of these?

16 R. Yes.

17 Q.67 Now, I would like to refer you to page 10
18 of your report where we have there, at the
19 bottom of page 10, and again on page 11,
20 references to evidence that was
21 introduced, not in this case initially but
22 in cases involving your client, NLH, in
23 complaints filed against TransÉnergie. Do
24 you remember that you were retained by
25 Newfoundland Labrador to act on their

1 behalf in these complaint proceedings
2 against Hydro-Québec?

3 R. Yes.

4 Q.68 Yes. And you remember testifying on these
5 issues that you addressed here again on
6 pages 10 and 11 and that this evidence was
7 actually filed in the complaint process.
8 Do you recall that?

9 R. I think so, I haven't read this recently
10 but...

11 Q.69 What have you not read recently, I'm
12 sorry?

13 R. I mean I haven't gone through each of
14 these items here.

15 Q.70 You mean you have not read your report
16 recently?

17 R. Well, I've read the report but I haven't
18 gone through to verify what you're saying.

19 Q.71 Well, do you not see at the bottom of page
20 10 a direct reference to complaint P-110-
21 1565 and...

22 R. Yes, I see that.

23 Q.72 Yes, you see that. So, is there a doubt
24 in your mind that this reference to these
25 elements of evidence are in fact

1 references to evidence filed in the
2 complaint process?

3 R. No.

4 Q.73 There's no doubt in your mind?

5 R. No.

6 Q.74 No. And when that report was initially
7 drafted, June 2009, my recollection was
8 that you were fully engaged in the
9 complaint process on behalf of the same
10 client against TransÉnergie, right?

11 R. Yes.

12 Q.75 It was before you actually testified
13 before the hearing led by a different
14 bench but that was a complaint process,
15 June...

16 R. I think that's right, yes.

17 Q.76 Yes, I think that's right as well. Now,
18 if we move to page 38, we saw that you
19 made reference directly to a complaint
20 proceeding involving your client, NLH.
21 Now, in page 38, there is a section
22 called, line 4, « *How can the ATC*
23 *harmonization lead to undue*
24 *discrimination?* » You see that? And from
25 38 to page 40, you deal with the notion of

1 undue discrimination.

2 And in order to support your
3 position, you made direct reference to a
4 situation involving Brookfield. Do you
5 see that, Mr. Sinclair? Page 39, line 22,
6 for instance, you refer to uncertainties
7 caused by recent actions on the HQT-NE
8 interface.

9 R. Yes.

10 Q.77 And three lines lower, line 26, you make
11 a direct reference to Brookfield. Do you
12 see that?

13 R. Yes.

14 Q.78 Do you recall referring to evidence or,
15 let's say generally, the Brookfield
16 situation in that section of your report?
17 Do you see that?

18 R. Yes, I see this section. What was your
19 question?

20 Q.79 The question is that to illustrate your
21 section or the content of your
22 recommendation, you saw appropriate, fit,
23 to refer to the Brookfield situation to
24 illustrate your views on this issue?

25 R. Yes.

- 1 Q.80 So, in this section, we see that you
2 address section 2.2 on rollover rights,
3 you address section 13.6 on curtailments.
4 These are all issues directly related to
5 the Brookfield complaint. Is that a fact
6 to your knowledge?
- 7 R. Well, I'm not sure what you mean by your
8 question but this section is about
9 harmonization.
- 10 Q.81 Yes, that was my point, that section is
11 about harmonization. Now, to illustrate
12 your views, you felt it relevant to make
13 direct references to the Brookfield
14 situation?
- 15 R. Yes.
- 16 Q.82 We saw that earlier. Now, in that
17 section, you address essentially two
18 issues, the rollover rights, section 2.2,
19 and the curtailment process defined in
20 section 13.6?
- 21 R. That's correct.
- 22 Q.83 That's correct. Now, these are the exact
23 issues addressed in the Brookfield
24 complaints.
- 25 R. That's right.

1 Q.84 You're aware of that fact?

2 R. Yes.

3 Q.85 Now, we just saw a moment ago that you
4 made reference, on page 38 - is it 38 or
5 39? It is 39, line 22, you say:

6 « *This uncertainty*
7 *arises because of*
8 *recent actions.* »

9 We read that, by HQT, on the HQT interface
10 with ISO-NE and you refer to this
11 Brookfield situation and the over-
12 subscription.

13 11H40

14 Now, on page 39, line 26. Is it 26?
15 Yes. Line 26 it says:

16 « *HQT refused a*
17 *request by Énergie*
18 *Brookfield*
19 *Marketing...* »

20 You recall the statement, Mr. Hanser, I
21 assume?

22 R. I remember this, yes.

23 Q.86 Mr. Sinclair, yes.

24 R. Hum-hum.

25 Q.87 Now, may I ask you... well, I guess, I

1 assume that you had access to some
2 information or documents relating to these
3 recent actions and refusals by HQT. I
4 assume you were provided with some
5 information to make those statements. Is
6 that correct?

7 R. Yes.

8 Q.88 Can I ask you to generally describe the
9 documents you were provided with to
10 describe the Brookfield situation?

11 R. I relied primarily on the expert report of
12 Mr. Roach.

13 Q.89 Mr. Roach's report was filed on September
14 28th, 2010. That's a fact. Your report
15 was filed on September 23, 2010, five days
16 earlier.

17 R. Then I...

18 Q.90 Am I to understand you were provided with
19 a copy of a draft report prepared by Mr.
20 Roach?

21 R. No, no, no, I must be mistaken then.

22 Q.91 You must.

23 R. I'd have to get back to you on what I
24 read.

25 Q.92 Okay.

1 R. But there was something related to the
2 case.

3 Q.93 Okay. You don't recall this morning the
4 nature, a general description of the
5 nature, type of documents you were
6 provided to make those statements about
7 the Brookfield situation. You cannot tell
8 us what you were provided with?

9 R. I can't remember.

10 Q.94 When did you learn of that Brookfield
11 situation for the first time, Mr.
12 Sinclair?

13 R. I can't remember.

14 Q.95 Who provided you with information about
15 the Brookfield situation, Mr. Sinclair?

16 R. Probably a discussion with my clients.

17 Q.96 So, your client provided you with
18 information concerning Brookfield?

19 R. Yes, I think there was probably a
20 discussion about one of these issues of
21 harmonization and there was a discussion
22 about how the harmonization has already
23 actually been applied. And Brookfield was
24 having trouble with it and a discussion
25 came up and perhaps I had asked for some

1 information after that, but I don't
2 recall.

3 Q.97 Okay. Let me ask you a few additional
4 questions before we make the undertaking.

5 Did you meet with Brookfield's
6 representatives to discuss the
7 Brookfield's situation?

8 R. No.

9 Q.98 You're sure?

10 R. You mean, before I filed the testimony?

11 Q.99 Yes. Or after.

12 Me ANDRÉ TURMEL :

13 Avec votre permission, là, je ne permettrai pas...
14 Là, il l'a fait une fois. Bon, bien, quand il y a
15 un non clair et ferme, qu'on mette en doute, quand
16 on dit: Avez-vous fait ceci? Non. Là: Are you
17 sure? Simplement pour l'avenir que maître Dunberry
18 soit... fasse attention à ce type de remarque là,
19 qui pourrait nous entraîner à déraper puis à passer
20 beaucoup de temps devant vous, Monsieur le
21 Président.

22 Me ÉRIC DUNBERRY :

23 Monsieur le Président, le témoin a dit à plusieurs
24 reprises qu'il ne se rappelait pas d'un certain
25 nombre de choses. Là, il se rappelle d'une chose.

1 Je veux juste m'assurer qu'il n'y ait pas
2 d'ambiguïté dans la question. Certaines de mes
3 questions ont été jugées longues et je les ai
4 reposées à quelques reprises. Alors, je voulais
5 juste m'assurer que le témoin avait bien compris
6 parce qu'il y avait la question de savoir si c'était
7 avant ou après. Alors, j'allais préciser la
8 question.

9 Q.100 Whether Mr. Sinclair, you can recall
10 whether you had discussions with
11 Brookfield, on the Brookfield situation
12 that is referred to in your report prior
13 or after filing your report?

14 R. Yes.

15 Q.101 Yes. Could you describe... could you
16 answer a bit more in detail?

17 R. Prior to filing the report, I did not have
18 discussions with Brookfield about that
19 matter. There was a discussion, I did
20 meet with Brookfield, I think it was in
21 February and...

22 Q.102 Of this year? 2011?

23 R. 2011. It was more of a friendly meeting
24 while we were all in town here.

25 Q.103 Did you discuss the content of your report

1 or the content of Mr. Roach's report?

2 R. I really wasn't involved much in the
3 discussions. There might have been
4 discussions of Mr. Roach's report but
5 nobody was asking me questions about it.
6 I was more listening than anything.

7 Q.104 But did you or did you not, I'm not sure
8 I understand your answer, did you meet
9 Brookfield's representative to discuss the
10 Brookfield situation? Your answer was yes
11 after the report was filed.

12 R. No, no...

13 Q.105 So, I assume that the meeting was about
14 the Brookfield situation.

15 R. I don't think... I didn't arrange the
16 meeting. I don't think it was
17 specifically to discuss the Brookfield
18 situation. I think it was just a meeting
19 among interveners with common concerns.
20 Brookfield's situation with the
21 harmonization may have come up but I don't
22 remember.

23 Q.106 You don't remember whether the ATC
24 consistency coordination issue that is
25 specifically addressed in your report was

1 an issue for your meeting with Brookfield?
2 R. Yes, it certainly wasn't a specific reason
3 for the meeting and I can't remember if it
4 was even talked about.

5 Q.107 But the question was whether or not this
6 was the object of any discussion with...

7 R. I don't remember.

8 Q.108 You don't remember that.

9 R. I would have remembered if it was an in-
10 depth discussion. So I assume that it was
11 not discussed.

12 Q.109 So, as a general undertaking, would you
13 please confirm when you learned for the
14 first time about those recent actions to
15 which reference is made on page 39 of your
16 report?

17 ENGAGEMENT #7:

18 Inform when Dr. Sinclair was provided with the
19 information and documents relating to the Brookfield
20 situation on which he relied for purposes of his
21 report.

22 Me ÉRIC DUNBERRY :

23 Q.110 As a following undertaking, could you
24 please describe and identify who provided
25 you with the information and documents

1 relating to the Brookfield situation on
2 which you relied for purposes of your
3 report?

4 R. I can tell you that now. I got that from
5 my client.

6 Q.111 Okay. But I'd like you to review your
7 notes and see whether you were provided
8 with by any other person.

9 R. I'll check but I'm sure I wasn't.

10 Q.112 Okay. But please verify.

11 ENGAGEMENT #8:

12 Describe and identify who provided Dr. Sinclair with
13 the information and documents relating to the
14 Brookfield situation on which he relied for purposes
15 of his report.

16 Me ÉRIC DUNBERRY :

17 Q.113 And I would also ask you to provide me, by
18 way of an undertaking, and I'm now at
19 number 9, providing me with a list of the
20 information and documents that you were
21 provided with in relation to the
22 Brookfield situation.

23 ENGAGEMENT #9:

24 Provide a list of all documents and information
25 provided to Dr. Sinclair in relation to the

1 Brookfield situation.

2 Me ÉRIC DUNBERRY :

3 Q.114 And providing a copy of the information
4 and the documents that were provided to
5 you in relation to the Brookfield
6 situation. That would be undertaking
7 number 10.

8 Me ANDRÉ TURMEL :

9 Juste pour être certain, là, en ce qui a trait à
10 Brookfield, je comprends qu'il y a trois sous-
11 engagements, le 8, le 9 et le 10, le 8 étant à
12 partir de quel moment, c'est un peu l'aspect
13 chronologique, là, sauf erreur...

14 Me ÉRIC DUNBERRY :

15 Bien, c'est avant ou après le rapport dans chacun
16 des cas.

17 Me ANDRÉ TURMEL :

18 Oui. Le neuvième étant la liste des informations et
19 documents reliés au dossier à Brookfield, en lien
20 avec sa mention à la preuve. Et le 10, peut-être
21 juste clarifier entre 9 et 10 quelle est la
22 différence.

23 Me ÉRIC DUNBERRY :

24 Monsieur le Président, les notes sont, je pense,
25 claires, je l'espère.

1 LE PRÉSIDENT :

2 Disons que la Régie va apprécier peut-être de
3 récapituler 7, 8, 9, 10 portent sur quoi exactement?
4 Le premier était sur ce qui était antécédant au
5 dépôt de la preuve.

6 Me ÉRIC DUNBERRY :

7 Je peux le faire. Le danger, c'est qu'à chaque fois
8 c'est dit de façon peu différente et que le témoin
9 ne sache plus si vraiment il l'a.

10 LE PRÉSIDENT :

11 Seulement pour les fins de...

12 Me ÉRIC DUNBERRY :

13 Pour les fins des notes sténographiques...

14 LE PRÉSIDENT :

15 ... clarification.

16 Me ÉRIC DUNBERRY :

17 ... mais je pense qu'on pourra se fier à mon propos
18 repris il y a quelques minutes mais le numéro 7
19 c'était le when, le numéro 8 c'était le who, et le
20 suivant c'était le what, la liste et le suivant
21 c'est les copies, voilà.

22 LE PRÉSIDENT :

23 7, 8, 9, donc on est à 9.

24 Me ANDRÉ TURMEL :

25 Je m'excuse, là, juste pour bien comprendre parce

1 qu'on va vouloir guider l'expert, là. 7 c'est le
2 when, 8 c'est le who, 9 c'est le what, quel type de
3 document et, là, mon confrère...

4 Me MARIE-CHRISTINE HIVON :

5 10, c'est copie des documents...

6 Me ANDRÉ TURMEL :

7 Est-ce qu'on ne peut pas les mettre dans le 9 peut-
8 être simplement pour...

9 Me ÉRIC DUNBERRY :

10 Monsieur le Président, je n'ai pas de difficulté à
11 les appeler 9 et 10.

12 Me ANDRÉ TURMEL :

13 C'est parce que c'est en lien, là, alors...

14 Me ÉRIC DUNBERRY :

15 Je préférerais 10 parce que c'est un engagement
16 différent si c'est mon choix.

17 LE PRÉSIDENT :

18 Allons-y avec 10.

19 Me ÉRIC DUNBERRY :

20 Voilà. Merci, Monsieur le Président.

21 ENGAGEMENT #10 :

22 Provide copy of the documents given to Dr. Sinclair
23 in relation to the Brookfield situation.

24 Me ÉRIC DUNBERRY :

25 Q.115 Do you recall seeing a copy of

1 Brookfield's actual statement of claim,
2 the formal proceeding filed in Court?

3 R. At some point, I have seen the complaint.
4 Whether it was summarized, in an order or
5 not, I can't remember.

6 Q.116 You don't remember whether it was before
7 or after filing the report but you recall
8 seeing it?

9 R. No, I don't recall.

10 Q.117 Okay.

11 R. I recall seeing the statement of the
12 complaint somewhere at some point but I
13 don't remember when.

14 Q.118 Okay. As undertaking number 11 and you
15 may actually answer some of these
16 undertakings by the previous undertakings
17 but just to be on the safe side, as
18 undertaking 11, I would ask you to confirm
19 whether you were provided with a copy of
20 the actual complaint proceedings filed by
21 Brookfield. And again as part of
22 undertaking number 11, confirming when you
23 actually received that complaint
24 proceeding.

25 ENGAGEMENT #11:

1 Confirm whether Dr. Sinclair was provided with a
2 copy of the complaint proceedings filed by
3 Brookfield; if yes, confirm when it was received.

4 Me ÉRIC DUNBERRY :

5 Q.119 Were you provided... following question.
6 Were you provided with a copy of the
7 actual Transmission Service Agreements
8 that Brookfield relied upon to file its
9 complaint confirming firm reservation
10 rights on the HQT-New England intertie?
11 Do you recall seeing the Service
12 Agreements?

13 R. I don't recall seeing that.

14 Q.120 So, you may have seen them or not or you
15 don't recall?

16 R. I'm pretty sure I did not see that.

17 Q.121 Okay. So, as undertaking number 12 to
18 confirm, following a review of your notes,
19 whether you were provided with a copy of
20 the actual Transmission Service Agreements
21 and, in the affirmative, confirming the
22 approximate date of receipt of undertaking
23 number 12.

24 Me ANDRÉ TURMEL :

25 Excusez-moi, cher confrère, là, parce que, là, je ne

1 sais pas si on veut se rendre à 20 ou à 25 avec
2 Brookfield mais me semble-t-il que dans l'engagement
3 10 de tous les documents reliés de près ou de loin
4 au dossier Brookfield, quant à moi, ça doit
5 certainement inclure ce qui... je ne sais pas s'il
6 part avec une énumération qui s'en vient mais la
7 confirmation du TSA, je ne sais pas si celui-ci
8 faisait ou non partie de la plainte, j'imagine que
9 oui.

10 Mais, là, est-ce qu'on va commencer à
11 sous-diviser la liste des documents générale de 10
12 en différents sous-engagements pour arriver à 25
13 engagements pour dire que finalement les engagements
14 additionnels après 10 c'est les mêmes que 10, là?
15 Je veux bien comprendre, là, si on en a d'autres
16 comme ça encore à venir dans Brookfield ou pas et,
17 le cas échéant, pourquoi ne pas les regrouper dans
18 10?

19 Me ÉRIC DUNBERRY :

20 Monsieur le Président, j'essaie d'avoir un peu de
21 contre-interrogatoire, d'avancer à un certain
22 rythme. Ça aide les choses. J'ai été interrompu,
23 je pense, quatre fois maintenant sur des numéros
24 d'engagements. Les engagements parlent d'eux-mêmes.
25 Ils sont clairs.

1 Si effectivement je demande pour être plus
2 sûr la communication d'un document particulier qui
3 peut être visé par un engagement plus large, la
4 réponse sera réponse à l'engagement numéro 9 voir
5 réponse à l'engagement numéro 3. Je ne pense pas
6 qu'on a besoin, là, d'interrompre continuellement le
7 procureur en contre-interrogatoire, là, pour
8 discuter de questions, somme toute, assez simples
9 pour éviter... pour éviter de reporter la suite des
10 choses à demain. Allons-y rondement.

11 Je ne vois pas l'utilité de ce genre
12 d'interruption là. Tout le monde comprend ce qu'on
13 recherche et les réponses pourront suivre de façon
14 logique.

15 LE PRÉSIDENT :

16 Alors, ici la Régie retient le point de maître
17 Dunberry. Je pense qu'il a demandé des numéros
18 d'engagements par sujet. Par contre, lorsqu'une
19 réponse est claire que c'est oui ou non, qu'il n'en
20 a pas eu connaissance, bien là, pas besoin de faire
21 prendre un engagement écrit pour...

22 Me ÉRIC DUNBERRY :

23 Tout à fait, Monsieur le Président.

24 LE PRÉSIDENT :

25 ... dans une telle circonstance.

1 Me ÉRIC DUNBERRY :

2 Tout à fait, tout à fait.

3 ENGAGEMENT #12 :

4 Inform if Dr. Sinclair was provided with a copy of
5 Brookfield's Transmission Service Agreements and, if
6 so, confirm the approximate date of receipt.

7 Me ÉRIC DUNBERRY :

8 Q.122 Mr. Sinclair, did you attend the
9 Brookfield hearing on September, I believe
10 it was 14 to 17?

11 R. No.

12 Q.123 Were you provided with transcripts of that
13 hearing?

14 R. No.

15 Q.124 Is it fair to say that you have not, as
16 part of your mandate for NLH, performed
17 any personal analysis of the circumstances
18 that led to that complaint filed by
19 Brookfield?

20 R. What do you mean by personal analysis?

21 Q.125 Personal analysis, an analysis made by
22 yourself of the facts and circumstances
23 relevant to this complaint? Were you
24 mandated to review the circumstances that
25 led to that complaint as part of your

1 mandate from NLH? Because I didn't see
2 that as part of your report in what you
3 and I read before. I didn't see that. So
4 the question is: Was this part of your
5 mandate or not and did you personally
6 review those facts?

7 11H55

8 R. Well, you have to remember that what was
9 written in the first part of my report
10 here was the original mandate. And then,
11 there was this additional evidence that
12 came in. And so, there were probably some
13 verbal discussions about further mandates
14 in addition to what's written on page 2 of
15 whatever you cited earlier.

16 So whether... there certainly was not
17 any mandate to do an in-depth analysis of
18 the Brookfield situation. Obviously,
19 Brookfield came up in the discussion of
20 the harmonization. So, I probably, you
21 know, how discussions go with your client,
22 so you may have implicitly got the idea
23 that yes, we should, you know, think about
24 how Brookfield may fit in here, something
25 like that. But it wasn't written down

1 anywhere that I should personally look
2 into it and do an analysis of Brookfield.

3 Q.126 Okay, that was the second part of my
4 question. It eventually become part of
5 your report. We all saw in your report
6 references to the Brookfield situation.

7 R. Right.

8 Q.127 It didn't appear in your report, for no
9 reason. I'm sure you were eventually
10 asked by your client to make a comment
11 about it. But the question was really
12 truly...

13 R. No, I wouldn't put it that way.

14 Q.128 ... whether you personally reviewed the
15 circumstances that led to that complaint.
16 This is going back to the 2009 July ATC
17 harmonization initiative and there were
18 issues with the way it was done and they
19 had discussions with Brookfield and they
20 had exchange of correspondance. All of
21 this was introduced as part of the
22 evidence in the complaint process. There
23 was an entire factual record.

24 My question is that, Mr. Sinclair,
25 did you or did you not personally review

1 that evidentiary record, the facts that
2 led to the complaint, did you or did you
3 not personally review those facts?

4 R. Do you mean the files, the filing?

5 Q.129 I mean the facts, the facts are contained
6 in the documents, maybe you had
7 discussions with Brookfield's
8 representatives about what took place, I
9 don't know. I'm asking you whether you
10 personally reviewed the circumstances that
11 led to these complaints, the facts?

12 R. I think that when I respond to some of
13 your other undertakings that I'll describe
14 what I reviewed. And then, you'll know
15 what I reviewed.

16 Q.130 No, I'm asking you now, do you recall
17 reviewing personally these facts?

18 Me ANDRÉ TURMEL :

19 Peut-être là-dessus, je vais m'objecter. Les
20 engagements effectivement ont été pris de 8, 9 à 13
21 ou 14, où on nous demandait la séquence des faits
22 chronologiques. Évidemment, il ne s'en souvient
23 pas. On demande de sortir toutes les informations
24 qui ont été portées à sa connaissance. Et
25 maintenant, on tente une dernière question

1 évidemment pour arriver à la conclusion laquelle
2 recherche mon confrère. Encore faut-il que l'expert
3 Sinclair ressorte l'information et, de cette
4 information-là, on pourra certainement savoir quel
5 type d'information lui a été fournie.

6 Et au moment où on se parle, il n'est pas
7 en mesure de répondre à cette information-là.
8 Alors, il ne peut pas conclure à la réponse qu'on
9 tente de lui suggérer à ce moment-ci.

10 Me ÉRIC DUNBERRY :

11 Monsieur le président, je ne sais pas si c'était une
12 objection, je présume que si c'en était une...

13 Me ANDRÉ TURMEL :

14 Oui, c'en est une.

15 Me ÉRIC DUNBERRY :

16 Si c'en était une, j'ai demandé au témoin s'il est
17 en mesure d'identifier les documents. Et sa mémoire
18 ne lui permet pas d'identifier les documents qu'il
19 aurait ou qu'il n'aurait pas revus. Ça, c'est une
20 chose.

21 Mais là, on comprendra tous que son
22 rapport date de septembre 2010, ce n'est pas si
23 loin. Et je lui demande s'il a un souvenir
24 quelconque. Je ne lui demande pas de savoir s'il a
25 revu tel ou tel document spécifiquement, on a déjà

1 couvert ça. Je lui demande s'il a un souvenir
2 d'avoir fait une analyse personnelle des faits
3 auxquels il réfère dans son propre rapport.

4 Alors, son rapport réfère à des actions,
5 des gestes posés par TransÉnergie et il condamne,
6 dans son rapport, ces gestes comme étant, et c'est
7 à la page suivante, à la page 40, qui n'ont pas été
8 honorés, les droits de Brookfield n'ont pas été
9 honorés. Ce rapport-là a été rendu avant que la
10 décision D-2010-160 soit rendue.

11 Alors, je lui demande, et ça me paraît
12 être assez important quand vous jugerez du poids à
13 donner à cette partie du rapport, s'il a un souvenir
14 quelconque d'avoir fait une analyse factuelle
15 quelconque de la situation qu'il décrit dans son
16 rapport à lui.

17 Et la réponse, je ne veux pas paraphraser,
18 mais j'ai compris qu'il va me dire de ce dont il se
19 rappelle quand il aura fait la révision des
20 documents. Je pense que j'ai le droit de lui
21 demander en contre-interrogatoire non pas s'il a
22 révisé tel ou tel document, ce qui a été fait, mais
23 est-ce qu'il se rappelle devant vous, il témoigne
24 devant vous, là, avec un rapport qui porte des
25 conséquences dans les délibérés, conséquences au

1 plan théorique parce que vous devez tenir compte de
2 toute la preuve qui est devant vous. Vous pouvez
3 l'éliminer, vous pouvez la rejeter, vous pouvez ne
4 pas la considérer, mais là, elle est devant vous.

5 Alors, je lui pose s'il a un souvenir
6 d'avoir fait une analyse personnelle. Parce que
7 s'il n'a pas fait personnellement d'analyse, c'est
8 peut-être quelqu'un lui a dit quelque chose et il
9 l'a rapporté ou bien il a fait l'analyse lui-même.
10 Alors, c'est indépendant ou ça ne l'est pas.

11 Alors, je lui pose cette question-là, et
12 je pense, Monsieur le Président, que si le témoin ne
13 le sait pas, on ne pourra pas le demander à d'autres
14 témoins. Si la réponse, c'est qu'il n'a aucun
15 souvenir, bien, on va s'arrêter là. Mais je pense
16 que j'ai le droit d'avoir cette réponse-là.

17 Me ANDRÉ TURMEL :

18 Vous pouvez ne pas aimer les réponses qu'on vous
19 donne, mais vous venez vous-même d'affirmer qu'il a
20 répondu à votre question.

21 Me ÉRIC DUNBERRY :

22 Non mais...

23 Me ANDRÉ TURMEL :

24 Et vous n'aimez pas la réponse. Mais ça m'apparaît
25 assez clair que maître Dunberry n'aime pas la

1 réponse qu'il a eue et il tente, pour une deuxième,
2 on va peut-être partir une troisième, quatrième
3 fois, mais d'emblée le témoin indique qu'il a besoin
4 certainement de l'ensemble des documents.

5 Écoutez, ce dossier-là ici là date depuis,
6 ça va faire bientôt trois ans, phase 1, phase 2.
7 Ponctué de plaintes de différents clients
8 insatisfaits à l'encontre de HQT...

9 Me ÉRIC DUNBERRY :

10 Monsieur le Président, je ne sais pas si c'est très
11 utile tout ça, là.

12 Me ANDRÉ TURMEL :

13 Permettez-moi de...

14 LE PRÉSIDENT :

15 Maître Dunberry, nous allons entendre d'abord...

16 Me ANDRÉ TURMEL :

17 Si je peux compléter là.

18 LE PRÉSIDENT :

19 Laissez maître Turmel compléter, nous vous donnerons
20 la parole par la suite.

21 Me ANDRÉ TURMEL :

22 Alors, ce dossier porte sur la non-discrimination,
23 sur l'ouverture. Et la Régie ne fait pas ce
24 dossier-ci pour rien. Elle veut voir s'il y a lieu
25 de changer le tarif d'OATT. Il y a des situations

1 factuelles qui sont apparues dans le passé récent,
2 celle de Terre-Neuve. NLH n'est certainement pas
3 une... est là pour le démontrer. Celle de
4 Brookfield également et d'autres peut-être.

5 Ceci étant dit, maître Dunberry n'aime pas
6 les réponses qu'il a. La preuve des engagements qui
7 ont été pris, s'il avait posé sa question au début,
8 au tout début de sa série d'engagements, peut-être
9 qu'on aurait été assez éclairé, mais ce n'est pas le
10 cas.

11 Alors, de deux choses l'une, la réponse,
12 elle est fournie. Au cas échéant, le témoin pourra
13 compléter dans les réponses à ses engagements, comme
14 HQT le fait souvent, vient toujours par ses
15 engagements tenter de venir justifier, expliquer le
16 détail de dates qui sont loin.

17 Le témoin est un expert reconnu, est
18 occupé dans différents dossiers, signe différents
19 documents, voit différentes preuves. De lui
20 demander ce matin ce qu'il a vu exactement, bien,
21 commençons par les engagements et on verra la suite.

22 LE PRÉSIDENT :

23 Maître Dunberry.

24 Me ÉRIC DUNBERRY :

25 Monsieur le Président, la seule et unique question

1 qui est posée à l'heure actuelle au témoin et je ne
2 pense pas avoir eu une réponse, c'est de savoir s'il
3 a, lui personnellement, effectué une analyse des
4 faits relatifs à la situation qu'il allègue dans son
5 rapport.
6 LE PRÉSIDENT :
7 Un instant. Alors, nous allons prendre la pause du
8 lunch et au retour, la Régie rendra sa décision. Il
9 est 12 h 05. Donc, nous allons reprendre à 13 h 20.
10 Me ÉRIC DUNBERRY :
11 Merci, Monsieur le Président.
12 SUSPENSION DE L'AUDIENCE
13 13H22
14 REPRISE DE L'AUDIENCE
15 LE PRÉSIDENT :
16 Alors, reprise de l'audience.
17 La Régie va permettre la question formulée
18 par maître Dunberry mais elle vous demanderait quand
19 même de la répéter pour être certain qu'on a
20 exactement la bonne question...
21 Me ÉRIC DUNBERRY :
22 Oui. Oui, je vais essayer de ne pas...
23 LE PRÉSIDENT :
24 ... pour l'engagement.
25 Me ÉRIC DUNBERRY :

1 ... de ne pas la modifier.

2 Q.131 So, Mr. Sinclair, we're going back to
3 where we left the matter just before
4 lunch. I was asking you whether you
5 personally performed any analysis of the
6 facts and circumstances that led to the
7 Brookfield situation to which you refer in
8 your report?

9 R. Well, if you look at my report, I talk
10 about the Brookfield situation and state
11 a few facts in the report itself and then
12 draw conclusions from those facts. And
13 where I got those facts from is subject to
14 your previous questions, undertakings, so
15 I will let you know.

16 Q.132 But you did not conduct any personal
17 investigation, let's use that word, you
18 did not, as part of your mandate, conduct
19 an investigation of the relevant facts
20 proactively?

21 R. Well, I got these facts from some of the
22 documents associated with the case. So,
23 that extent, it wasn't an investigation.

24 Q.133 But these documents were given to you I
25 understand?

1 R. That's right.

2 Q.134 All right. Did you take the initiative of
3 contacting Brookfield's people?

4 R. No.

5 Q.135 No, you did not contact Hydro-Québec's
6 people either?

7 R. No.

8 Q.136 No. And you did not go on the OASIS or
9 look for additional information
10 proactively, that was information you
11 received?

12 R. No, it was based on the facts that I could
13 get from the documents.

14 Q.137 Now, if we go back to page 34, this entire
15 section discussing the Brookfield
16 situation is part of a Section VII on page
17 34 called « *Response to HQT's Amended*
18 *Evidence* ». You see this on page 34?

19 R. Yes.

20 Q.138 And if you go to page 36, it is more
21 specifically included in a subsection A.
22 referring to Mr. Hanser's report.

23 R. Yes.

24 Q.139 All right. So, I understood when I read
25 that that this section about Brookfield

1 was presented as a rebuttal, as a
2 response, to Mr. Hanser's evidence. And
3 I went back to Mr. Hanser's report and I
4 tried to find any allegation to which you
5 could have been responding. And unless
6 you can assist me, there's no discussion
7 in Mr. Hanser's report about section 2.2,
8 rollover rights, section 13.6.

9 Did you find anything in Mr. Hanser's
10 report that called for this rebuttal or
11 this was something that came out of
12 another discussion?

13 R. No. Well, the point of Mr. Hanser is to
14 support the harmonization process and I'm
15 just warning that there can be problems
16 with the harmonization process from a
17 competitive point of view. And so I put
18 the Brookfield case up as an example.

19 Q.140 But not in responding specifically to an
20 allegation of Mr. Hanser; it was your
21 decision to refer to the Brookfield
22 situation as part of that section, I
23 assume?

24 R. Yes, Mr. Hanser doesn't talk about
25 Brookfield.

- 1 Q.141 Now, is there anything in your client's
2 evidence, Newfoundland Labrador, that
3 deals with the Brookfield situation or
4 that deals with rollover rights or section
5 13.6? Is there anything in your client's
6 own evidence that deals with this, except
7 for your report obviously, to your
8 knowledge?
- 9 R. No, not to my knowledge.
- 10 Q.142 Now, maybe it's my memory but did you say
11 that you had a discussion with Mr. Roach
12 about this issue?
- 13 R. No.
- 14 Q.143 You said that you did not before filing a
15 report but that you attended the meeting
16 after filing your report?
- 17 R. I did not meet with Mr. Roach.
- 18 Q.144 You had no exchanges with Mr. Roach,
19 either orally or in writing?
- 20 R. Not about this issue.
- 21 Q.145 About other issues?
- 22 R. I think I said good morning to him when I
23 saw him here.
- 24 Q.146 Yes. But seriously, did you have any
25 discussions with Mr. Roach about any

1 issues dealt with in your report?

2 R. No.

3 Q.147 I would like now to move to pages 23 and
4 24 where you actually address another
5 issue, which is imbalance service. It's
6 a fairly short section, Mr. Sinclair, two
7 pages or a bit less than two pages. And
8 in that section, you make reference to
9 this joint statement that was entered into
10 on March 27, 2009. And we see this on
11 page 23, lines 21 and 22. You refer as
12 well to one answer to a question on page
13 24, NLH request 11.1, and you do refer as
14 well to Schedules 4 and 5.

15 And the question I have for you on
16 this is did you review any or do you have
17 any recollection of reviewing any other
18 document concerning imbalance pricing.
19 except for these three items, the joint
20 statement, Schedules 4 and 5 and one
21 answer to a question, before, before
22 filing your report?

23 R. No. As you see, we couldn't get the
24 information so I just finished my
25 testimony by saying we would just like to

1 get more information.

2 Q.148 So, your answer to my question is no, is
3 that correct?

4 R. Yes, it's what it says here, right.

5 Q.149 Okay. So, you did not review any
6 documents filed by any of the interveners
7 on imbalance service?

8 R. No, I didn't see anything like that.

9 Q.150 Now, this issue was addressed by Mr. Orans
10 and Mr. Clermont on February 7 and 8,
11 2011. Do you recall attending these
12 hearings?

13 R. No, I wasn't there.

14 Q.151 You weren't there. Did you obtain a copy
15 of the transcript of that hearing? Did
16 you review a transcript?

17 R. No, I did not review a transcript.

18 Q.152 If we move now to page...

19 R. Before you move on, I better check about
20 those dates, whether I was here or not.

21 Q.153 So, as undertaking number 13, Mr. Sinclair
22 will verify whether he attended the
23 February 7 and 8, 2011 hearings on
24 imbalance service and pricing, and in the
25 negative, whether he was provided with a

1 copy of the transcript.

2 R. I can tell you I didn't see the
3 transcript.

4 Q.154 Okay.

5 ENGAGEMENT #13 :

6 Verify and confirm whether Dr. Sinclair attended the
7 hearings of February 7 and 8, 2011 on imbalance
8 service and pricing.

9 Me ÉRIC DUNBERRY :

10 Q.155 Now, I'm moving to the next section in
11 your report, Section V, starting at page
12 24 I believe. And again, Mr. Sinclair,
13 when I read that section from page 25 to
14 30, I find very little reference to
15 TransÉnergie's evidence in chief except
16 for the OATT itself.

17 And perhaps I missed something but
18 essentially it sounds like there's only a
19 reference to the OATT, which is part of
20 our evidence.

21 Do you recall reviewing any of the
22 evidence filed in French, most of it, all
23 of it actually except for the report by
24 Mr. Hanser and Orans which is not
25 discussing this issue. Did you review any

1 of the evidence filed by my client on
2 designated resources?

3 R. Well, I think this issue is fairly well
4 laid out both in the HQT OATT and in the
5 Order 890 OATT. So, I thought that... I'm
6 sure that the analysis is sufficient to
7 use.

8 Q.156 So, the answer...

9 R. If you look at the HQT OATT and 890 OATT
10 to determine whether the HQT OATT meets
11 the minimum requirements of the 890 OATT.

12 Q.157 So, your analysis is based on your reading
13 and interpretation of the HQT OATT and the
14 FERC *pro forma* OATT, is that correct?

15 R. Yes, 90%.

16 Q.158 But let's talk about the other 10%. My
17 question was whether you, in fact,
18 reviewed any of the evidence filed by my
19 client on designated resources prior to
20 filing your report on September 23rd?

21 R. I have to check again. I'm sure I would
22 have reviewed HQT-1 which was your... I
23 can't remember what it's called in French
24 but it was basically the introductory
25 summary of the filing.

1 Q.159 Yes. It was a translation probably that
2 you read because it's in French.

3 R. A translation, right.

4 Q.160 Yes, so you recall reviewing a translation
5 of that document? Because this morning
6 you weren't able to recall that.

7 R. I remember going through that document and
8 seeing parts of it translated.

9 Q.161 So, as an undertaking, I would like you to
10 verify whether you... well, actually, I'll
11 rephrase the undertaking, Monsieur le
12 Président.

13 As a first undertaking, I would like
14 you to identify the documents filed by my
15 client, TransÉnergie, on designated
16 resources that were provided to you and
17 that you've reviewed and relied upon for
18 purposes of your report. And more
19 specifically, and that would be the next
20 undertaking... so that was undertaking
21 number 14.

22 ENGAGEMENT #14 :

23 Indicate which documents filed by TransÉnergie on
24 designated resources were provided to Dr. Sinclair
25 and that he reviewed and relied upon for the

1 purposes of his report.

2 Me ÉRIC DUNBERRY :

3 Q.162 And undertaking number 15 would be whether
4 you received a translation and reviewed
5 the following documents, and I will give
6 a list here for purposes of your
7 verification: HQT-2... HQT-1, I should
8 start with HQT-1; HQT-2; HQT-8, documents
9 1, 2, 5, 6 and 8; HQT-29, documents 2, 3,
10 4, 5, 6 and 8. That would be undertaking
11 number 15.

12 Me ANDRÉ TURMEL :

13 Évidemment, je comprends, je n'ai pas eu le bonheur
14 de tout prendre l'énumération que mon confrère a
15 faite, mais je comprends que ce sont des pièces
16 différentes de celles qu'il a énumérées ce matin?
17 Parce que ce matin on a fait un peu une énumération
18 qui me semblait ressembler à ce qu'il vient de
19 faire. Mais je comprends que c'est distinct, Maître
20 Dunberry?

21 Me ÉRIC DUNBERRY :

22 Bien, ces pièces contiennent, Monsieur le Président,
23 par exemple, des réponses à des demandes de
24 renseignements. Ce matin, on parlait s'il avait
25 pris connaissance des documents dans le cadre de son

1 rapport pour la pièce pour le sujet des ATC. Et
2 certains de ces documents sont les mêmes évidemment
3 sur les ressources désignées. Certaines parties ont
4 pu être traduites pour un sujet, d'autres non.

5 Alors, compte tenu du fait que le témoin
6 aurait reçu peut-être certaines traductions, pas de
7 l'ensemble du document mais certaines parties, il
8 pourra à ce moment-là répondre à la question et la
9 réponse sera la sienne évidemment.

10 LE PRÉSIDENT :

11 Alors, pour la majorité ce seraient les mêmes
12 pièces?

13 Me ÉRIC DUNBERRY :

14 C'est-à-dire c'est des pièces qui peuvent avoir...

15 LE PRÉSIDENT :

16 Un instant, un instant.

17 Me ÉRIC DUNBERRY :

18 Ah, excusez-moi.

19 LE PRÉSIDENT :

20 Est-ce que ça va pour...

21 Donc, ce que la Régie était en train de
22 dire c'est que la majorité des pièces sont les mêmes
23 mais la Régie permet la question, ce sera aux notes
24 sténographiques. Au besoin on pourra référer que
25 c'est la même réponse qu'à l'engagement précédent.

1 Mais je crois qu'il faut avancer.

2 Me ANDRÉ TURMEL :

3 D'accord.

4 ENGAGEMENT #15 :

5 Indicate whether Dr. Sinclair received translated
6 copies of the following documents and reviewed them,
7 HQT-1; HQT-2; HQT-8, documents 1, 2, 5, 6 and 8;
8 HQT-29, documents 2, 3, 4, 5, 6 and 8.

9 Me ANDRÉ TURMEL :

10 Mais ceci étant dit, Monsieur le Président, je me
11 permettrais juste un commentaire. Évidemment, mon
12 confrère passe beaucoup de temps à savoir ce que NLH
13 a... NLH ou ses témoins ou ses experts, puis je sais
14 qu'ils ont fait ça pour d'autres intervenants
15 anglophones qui viennent de l'extérieur du Québec,
16 tôt ou tard, et peut-être on vous fera des
17 représentations lors de l'argumentation, mais de
18 passer une bonne partie du temps à déterminer que
19 les gens de l'extérieur du Québec ne lisent pas le
20 français et de savoir ce qui a été ou pas fourni à
21 eux, on devrait se poser la question si dans les
22 prochains dossiers, dans tous les dossiers, pour
23 s'éviter du temps, les documents que HQT fournit à
24 l'égard de l'OATT ne devraient pas être soumis
25 complètement et pleinement dans les deux langues, en

1 anglais et en français, parce que la question
2 devient... nécessairement, mon confrère va
3 probablement tenter de tirer quelques arguments
4 relativement à ce qui a été lu en français ou en
5 anglais. Il y a là une perte importante de temps et
6 ça devient toujours un peu difficile pour les
7 clients qui... la réalité étant ce qu'elle est
8 souhaite obtenir l'information. Il y a toujours un
9 délai, tout ce que ça occasionne.

10 13H37

11 Ceci dit, on respecte bien, bien sûr, le
12 fait que nous sommes au Québec mais ceci étant dit,
13 de manière pragmatique dans les dossiers, je vous
14 annonce déjà qu'on va se poser quelques questions
15 pour l'avenir parce que sinon ça fait perdre un
16 temps fou et on pourrait économiser beaucoup de
17 temps à l'égard de ces demandes d'informations ou
18 demandes aux contre-interrogatoire.

19 Me ÉRIC DUNBERRY :

20 Monsieur le Président, je n'ai pas l'intention de
21 répondre à ce type de commentaire qui pourrait faire
22 l'objet d'une discussion lorsque le temps sera moins
23 précieux sur cet aménagement qui est proposé. La
24 seule réponse que je pourrais dire, c'est que le
25 rapport d'un expert n'est jamais meilleur que les

1 faits sur lesquels il s'est basé et c'est pour ça
2 que, dans tous les cas, devant tous les tribunaux,
3 on s'interroge beaucoup à savoir ce sur quoi se
4 fonde l'opinion de quelqu'un pour juger du bien-
5 fondé de cette opinion-là.

6 Alors, ce n'est qu'une question de
7 fondement, de crédibilité qui est au coeur de votre
8 délibération évidemment.

9 LE PRÉSIDENT :

10 Alors, évidemment, les droits de chaque partie sont
11 préservés de pouvoir en traiter en argumentation au
12 besoin de toute cette question. Au-delà de ça, la
13 Régie permet de continuer le contre-interrogatoire.

14 Me ÉRIC DUNBERRY :

15 Q.163 And in fact, this is the last question on
16 this issue, as a matter of fact.

17 Mr. Clermont testified on the issue
18 of designation on resources on February
19 the 9th and the 10th. Were you in
20 attendance on those days? I think you
21 answered earlier...

22 R. Yes, I was.

23 Q.164 ... that you were. And therefore, you
24 heard what Mr. Clermont said, I assume?

25 R. That's right, yes.

1 Q.165 Okay. My next topic, Mr. Sinclair, will
2 be ATC coordination. So, I would like to
3 go back to page 7 of your report, Section
4 II. And you refer to paragraph 207 at the
5 bottom of that page of Order 890 which
6 refers to the purpose of increasing
7 consistency and transparency of ATC
8 calculations.

9 May I ask you to simply read this
10 paragraph again, if you need to, and
11 answer the question whether you are in
12 full agreement, and I assume you are, in
13 full agreement with that statement or the
14 statements made by FERC on this, that this
15 is the purpose of ATC coordination?

16 R. Yes, I agree.

17 Q.166 Now, I'd like quickly to refer you to
18 other statements made by FERC, just to
19 make sure we agree on the common rules and
20 principles involved here. I'd like to
21 refer you to - and my colleague will show
22 to you...

23 Me ANDRÉ TURMEL :

24 Je veux juste attendre parce que c'est 890-A, B, C,
25 parce qu'il les a, là.

1 Me ÉRIC DUNBERRY :

2 Q.167 A, B, C, exactly. So, we will be
3 referring, Mr. Sinclair, to Ordonnance,
4 Order 890-A, B and C, if you have copies
5 with you.

6 Me ANDRÉ TURMEL :

7 Q.168 And I understand, Dr. Sinclair, that you
8 have paper copies but also you have it on
9 your computer too?

10 R. Yes.

11 Q.169 So, you may use whatever is much more
12 easier for you.

13 Me ÉRIC DUNBERRY :

14 Q.170 So, we just read the relevant passage from
15 Order 890. I would like now to ask you to
16 take a copy of Ordonnance 890-A and we'll
17 use B and C as well.

18 Me ANDRÉ TURMEL :

19 Est-ce que vous avez une copie pour... lui l'a mais
20 est-ce que vous avez une copie...

21 Me ÉRIC DUNBERRY :

22 Je n'ai pas amené de copie des ordonnances.

23 Me ANDRÉ TURMEL :

24 De copies additionnelles? Non?

25 Me ÉRIC DUNBERRY :

1 Non.

2 Me ANDRÉ TURMEL :

3 Simplement pour y faire référence, vous n'avez pas
4 de copie additionnelle?

5 Me ÉRIC DUNBERRY :

6 Non, non.

7 Me ANDRÉ TURMEL :

8 D'accord. Merci.

9 Me ÉRIC DUNBERRY :

10 Je présume que nous avons tous nos copies.

11 Me ANDRÉ TURMEL :

12 Oui, oui mais je voulais savoir si vous en aviez une
13 copie.

14 Me ÉRIC DUNBERRY :

15 Q.171 Paragraph 52, Mr. Sinclair, of that Order,
16 page 29.

17 R. Okay, this is 890-A.

18 Q.172 Yes.

19 R. Yes. What was the paragraph again?

20 Q.173 Paragraph 52, 5-2, page 29.

21 R. Okay.

22 Q.174 So, 52 says the following:

23 « In response to TDU
24 Systems, we clarify
25 that adjacent

1 *transmission providers*
2 *must coordinate and*
3 *exchange data and*
4 *assumptions to achieve*
5 *consistent ATC values*
6 *on either side of a*
7 *single interface.*
8 *This is applicable to*
9 *any - and I underlined*
10 *myself any -*
11 *neighboring*
12 *transmission providers*
13 *no matter whether they*
14 *use the same or*
15 *different ATC*
16 *methodologies. We*
17 *note however that the*
18 *anticipated*
19 *consistency is for*
20 *available capability*
21 *in the same direction*
22 *across an interface. »*

23 I assume you are also in agreement with
24 that statement of FERC?

25 R. Yes, I don't remember focusing on that in

1 particular but I don't see a problem with
2 it.

3 Q.175 So, you agree with that statement?

4 R. I agree that's what FERC said.

5 Q.176 Do you agree with what FERC said?

6 R. Well, I mean, that's policy, so I guess I
7 agree.

8 Q.177 So, it's a yes.

9 R. There is really no logic in it.

10 Q.178 You find no logic in that statement?

11 R. No, I mean, there is not a logical
12 statement and a conclusion to evaluate but
13 it's just a statement of policy, so I
14 agree it's a FERC statement of policy.

15 Q.179 Okay, but you, do you agree with that
16 policy, with that statement?

17 R. I think I would agree with that, yes.

18 Q.180 Okay. I'd like to move now to Ordonnance
19 890-B, paragraph 15 on page 9. And this
20 is a commission determination and I will
21 read it with you, if you allow me, and I
22 quote:

23 « The Commission
24 affirms the
25 clarification provided

1 in Order No. 890-A -
2 just that part that we
3 just read - that
4 adjacent transmission
5 providers must
6 coordinate and
7 exchange data and
8 assumption to achieve
9 consistent ATC values
10 on either side of a
11 single interface. We
12 disagree with
13 petitioners arguing
14 that consistent ATC
15 values should not be
16 interpreted as
17 identical. We
18 recognize that factors
19 such as timing of
20 reservation requests,
21 acceptances and
22 confirmations,
23 multiple interfaces
24 between an amount of
25 transmission providers

1 can make it difficult
2 to achieve
3 coincidental,
4 identical postings of
5 ATC values on both
6 sides of an interface.
7 However, as the
8 Commission explained
9 in Order No. 890, if
10 all of the ATC
11 components and certain
12 data inputs and
13 assumptions are
14 consistent, the ATC
15 calculation
16 methodologies being
17 finalized by NERC
18 through the
19 reliability standard
20 development process
21 should produce
22 predictable and
23 sufficiently accurate
24 consistent, equivalent
25 and replicable

1 *results. We therefore*
2 *disagree with the*
3 *directive to*
4 *coordinate and*
5 *exchange data and*
6 *assumptions to achieve*
7 *consistent ATC values*
8 *on either side of an*
9 *interface was newly*
10 *imposed in Order No.*
11 *890-A. The Commission*
12 *simply clarified that*
13 *the requirement stated*
14 *in Order No. 890*
15 *applied equally to*
16 *calculations of ATC on*
17 *either side of an*
18 *interface. »*

19 There is a subsequent Order by FERC that
20 comes back to the notion of identical ATC
21 values.

22 But aside from that and FERC has
23 ruled differently, would you agree with
24 that statement, with that policy
25 statement, Mr. Sinclair?

1 R. Yes, I agree.

2 Q.181 Moving now to paragraph 9 of Order 890-C
3 which is my last reference, bear with me,
4 it's the last one, it's on page 4 of Order
5 890-C, if I believe, it's document HQT-13,
6 document 1. And I won't read all of this
7 but you may want if you will, but from
8 paragraphs 7 and 8, they just go back to
9 the previous orders and summarize their
10 previous opinion on this and in paragraph
11 9 and soon I will read with you, they come
12 to, I would say, the final component of
13 the various orders. And it reads as
14 follows:

15 *« The requirement then*
16 *is not to achieve*
17 *identical postings*
18 *values on either side*
19 *of an interface as*
20 *Northwest contends*
21 *The requirement is*
22 *instead to achieve*
23 *consistency in such*
24 *values through the*
25 *development of ATC*

1 *calculation*
2 *methodologies to*
3 *produce sufficiently*
4 *accurate, consistent*
5 *equivalent and*
6 *replicable results.*
7 *In some instances, it*
8 *may be possible for*
9 *transmission providers*
10 *under these*
11 *methodologies to*
12 *achieve identical ATC*
13 *values on either side*
14 *of an interface. In*
15 *others, such as when*
16 *there are differences*
17 *in reservation status*
18 *or when there are*
19 *multiple interfaces*
20 *between the*
21 *transmission*
22 *providers, it may not*
23 *be possible or even*
24 *practical to achieve*
25 *identical values. »*

1 Last quote, last question, would you agree
2 with that policy statement as well?

3 R. Yes.

4 Q.182 Okay. Now, can you and I, after reading
5 of all this, agree that calculating and
6 posting predictable - and I'm quoting FERC
7 here - sufficiently accurate, consistent,
8 equivalent and replicable ATC values, is
9 helpful in itself to reach FERC's
10 objective?

11 R. Can you read it again? I missed the
12 first...

13 Q.183 Can you and I agree, do you agree with the
14 following proposition that calculating and
15 posting predictable and sufficiently - and
16 I'm reading because I want to use FERC's
17 wording...

18 R. Go ahead, good.

19 Q.184 ... sufficiently...

20 Me ANDRÉ TURMEL :

21 Just to say... pouvez-vous dire quelle est la
22 citation exacte que vous venez... vous en avez peut-
23 être cité trois ou quatre, là, laquelle... de quelle
24 parle-t-on?

25 Me ÉRIC DUNBERRY :

1 Monsieur le Président, je dois dire que mon collègue
2 a été particulièrement interventionniste dans un
3 contre-interrogatoire qui soulève jusqu'à maintenant
4 peu de difficultés juridiques qui pourraient
5 justifier une objection.

6 J'ai lu avec le témoin tous ces passages-
7 là. On reconnaît les mots à les entendre. Je peux
8 faire la référence mais ça ne sert à rien ce genre
9 d'intervention, je vous le soumets respectueusement,
10 Monsieur le Président.

11 Q.185 So, Mr. Sinclair...

12 LE PRÉSIDENT :

13 Ici, la Régie juge que les interventions devraient
14 se limiter. Si vous avez des objections, vous
15 pouvez les présenter et ne pas intervenir à tout
16 bout de champ dans l'interrogatoire parce que...

17 Me ANDRÉ TURMEL :

18 Oui, d'accord mais écoutez...

19 LE PRÉSIDENT :

20 ... à moins que ce soit vraiment nécessaire.

21 Me ANDRÉ TURMEL :

22 ... simplement ici...

23 LE PRÉSIDENT :

24 Ici le témoin suivait, la Régie aussi.

25 Me ANDRÉ TURMEL :

1 Oui, mais d'accord, Monsieur le Président.

2 LE PRÉSIDENT :

3 Il n'y a pas de difficulté, je pense, qui justifiait
4 d'interrompre.

5 Me ANDRÉ TURMEL :

6 Bien, écoutez, on essaie, nous, que le témoin
7 puisse... il y a eu trois citations en ligne qui ont
8 été... il y a quatre citations avec la question,
9 celle de monsieur Sinclair, trois citations de la
10 FERC. C'était une après l'autre. Il m'apparaît
11 décent que l'avocat de HQT dise simplement: Je vous
12 cite la dernière citation parce que manifestement
13 c'est 890-C, pour ne pas amener le témoin à penser
14 que ça vient de B ou de C ou de A, simplement pour
15 bien comprendre. Je comprends que c'est C. Merci.

16 LE PRÉSIDENT :

17 Alors, Maître Dunberry.

18 Me ÉRIC DUNBERRY

19 Q.186 So, the question again, Mr. Sinclair is do
20 you agree that calculating and posting -
21 and I'm quoting here from paragraph 9 of
22 Order 890-C - sufficiently accurate,
23 consistent, equivalent and replicable ATC
24 values is helpful in itself to achieve
25 FERC's objectives that you and I just read

1 going through the various Orders?

2 R. Calculating ATC values that are accurate,
3 consistent, yes. I agree with your
4 statement.

5 Q.187 Now, we saw that in Order 890-B, there was
6 a discussion whether this ATC coordination
7 should be looking for identical values in
8 all cases and in Order 890-B FERC said
9 yes, these ATC values should be identical.
10 But later, as we just saw, FERC nuanced
11 its comment, I would say, and concluded
12 that, in some cases, it was possible to
13 post identical ATC values and in order
14 circumstances it would not be possible to
15 achieve identical values.

16 R. Yes.

17 Q.188 You recall that and you agree that in some
18 cases it's possible and in some others
19 it's not?

20 R. Yes.

21 Q.189 Now, in cases where it is not possible to
22 achieve identical ATC postings, can we
23 agree that the service provider still has
24 the obligation to coordinate and produce
25 predictable and sufficiently accurate,

1 consistent, equivalent and replicable
2 results?

3 R. Yes.

4 Q.190 Okay. Now, to your knowledge, is there
5 any language in any of the FERC orders to
6 the effect that posting identical ATC
7 values is to be avoided for whatever
8 reason? Cases when it's possible, I
9 guess?

10 R. Is to be avoided?

11 Q.191 Yes.

12 R. No.

13 Q.192 And do you know if there is any language
14 in any of the FERC orders that suggests
15 that, in cases where it is possible to
16 post identical ATC values, it would be
17 preferable not to post identical values?

18 R. No.

19 Q.193 Okay. Now, I understood from your
20 presentation, because this morning you
21 adopted your report as is, but during the
22 presentation you made, you actually made
23 a change concerning the three horizons and
24 I would refer you to the slides or pages
25 14 to 16 and I would also refer you to

1 page 8 of your report. So, we will work
2 with both documents. So, if you can, and
3 I invite the Board members to perhaps do
4 the same, taking your report, page 8, line
5 24, section... there's no section number
6 but it starts with line 22. And on the
7 right side and on the left side, taking a
8 copy of your presentation of this morning.

9 13H53

10 R. Okay.

11 Q.194 Now, in your report that you adopted this
12 morning, as is, as reflecting your current
13 views, you said, and I quote:

14 « The main problem
15 with Attachment C-1 is
16 that it fails to
17 provide algorithms
18 specifying the
19 calculation of ATC in
20 the operating and the
21 planning horizons.
22 Attachment C-1 only
23 presents the ATC
24 calculation in the
25 scheduling horizon and

1 *in what HQT terms the*
2 *real-time horizon. »*

3 And then you continue expanding on this
4 issue. Now, that was then. So, what it
5 is now is in your presentation of this
6 morning, perhaps after reviewing some of
7 the evidence that you and I discussed this
8 morning, that you may or may not have
9 consulted at the relevant time, it appears
10 that on this issue of horizons you've
11 agreed that it is no longer an issue, that
12 you are satisfied, and I'm looking at the
13 bottom of page 14, maybe I misunderstood,
14 but I left in my notes the comment that it
15 is now a moot issue, moot meaning being
16 resolved, and that you no longer have any
17 issues with the way Schedule C-1 has been
18 drafted.

19 And there have been responses to
20 questions and there have been undertakings
21 to which we've responded and perhaps you
22 saw all of this after your report but
23 before testifying yesterday, or this
24 morning. So, can we agree, if not I have
25 a page full of questions, but can we agree

1 that you no longer make any
2 representations before this Board to the
3 effect that there is, and I quote: « A
4 main problem with the horizon issue. »

5 R. I think it's been resolved.

6 Q.195 So, I just want to make sure because I
7 won't be asking you any questions.

8 R. Okay.

9 Q.196 So, we're making a deal here, Mr.
10 Sinclair, the deal is as follows. I will
11 not ask you any questions if you confirm
12 clearly that you are in agreement with
13 HQT's proposal on these horizon issues?

14 R. Yes, I'm in agreement.

15 Q.197 So, because of that answer, I will not be
16 asking any questions on this. And I
17 assume that you're speaking on behalf of
18 your client, that's you've been authorized
19 to say what you just said, and then when
20 you made your presentation this morning,
21 you were authorized by your client to
22 declare that you are satisfied, yourself
23 and on behalf of your client, with the
24 proposal made by Hydro-Québec, otherwise
25 I will be back with my questions.

1 Me ANDRÉ TURMEL :

2 Peut-être juste si vous me permettez, juste pour
3 qu'on s'entende bien là, ça va peut-être faire en
4 sorte que les questions ne seront pas nécessaires,
5 mais vous faites référence à ce qui est écrit dans
6 la preuve écrite, mais donc la page... aux pages 14
7 et c'est bel et bien l'engagement 19 dont il était
8 question là? C'est suite à l'engagement 19? Je
9 veux juste être sur qu'on parle des bonnes choses?

10 Me ÉRIC DUNBERRY :

11 Bien, écoutez, c'est encore plus simple, Monsieur le
12 Président, parce qu'il y a l'engagement 19 mais il
13 y a toute une série de demandes qui remontent à
14 2009, antérieures au rapport là, il y a toutes
15 sortes de choses qu'on pourrait faire avec ça.

16 Mais ce que j'ai compris, pour éviter des
17 débats inutiles là, c'est que la présentation des
18 pages 14, 15 et 16 ce matin n'a pas été faite et
19 j'ai compris que cette présentation-là n'était pas
20 faite parce que ce qui était qualifié dans le
21 rapport comme *the main problem*, le problème
22 principal avec l'Annexe C-1 a été résolu, que ce
23 soit à la lumière d'une réflexion postérieure, à la
24 lumière de l'engagement 19 ou à la lumière d'autres
25 considérations, qu'aujourd'hui, devant la Régie, NLH

1 et son expert se déclarent satisfaits que la
2 proposition tarifaire réglementaire du Transporteur,
3 quant à la question des horizons, ne pose pas de
4 problème et ils se déclarent satisfaits du texte, du
5 langage, qui est proposé.

6 Si c'est le cas, Monsieur le Président,
7 c'est ce que j'ai compris, je vais sauter une page
8 complète de questions. Si ce n'est pas le cas, il
9 faudra y revenir. Mais c'est ce que j'ai compris.
10 Me ANDRÉ TURMEL :

11 La question simplement c'est il faudrait revenir au
12 texte de ce qui a été dit ce matin là. Mais moi je
13 veux savoir si vous faites référence à l'engagement
14 19? Ce que j'ai compris ce matin c'est que le
15 témoin indiquait que, suite à la réponse d'HQT à
16 l'engagement 19, celui-ci le confortait dans ce
17 qu'il avait déjà... à l'égard de ce qu'il avait déjà
18 écrit, et qu'en conséquence, *provided*... en autant
19 que... évidemment, l'engagement d'HQT n'entend pas
20 nécessaire une décision de la Régie, sauf erreur,
21 alors c'est un engagement de la Régie suite à une
22 décision... pardon, un engagement d'HQT, une réponse
23 à l'engagement d'HQT à une question de la Régie de
24 l'énergie, pardon, et c'est pour ça qu'il a
25 mentionné les pages 15 et 16. Évidemment, ceci

1 demeure en autant que la Régie considère que
2 l'engagement 19, que le banc est en accord avec
3 l'engagement 19.

4 En bref, c'est ce que si on fait référence
5 à l'engagement 19, je pense que c'est ce que le Dr
6 Sinclair voulait faire, c'est... peut-être le
7 questionner sur l'engagement 19, si celui-ci
8 rencontre ou répond à la demande, parce que ce n'est
9 pas clair là.

10 Me ÉRIC DUNBERRY :

11 Monsieur le Président, je ne sais pas ce que je
12 pourrais ajouter à ce que j'ai déjà dit là. Ce que
13 je comprends, l'engagement 19, pour y revenir, c'est
14 un engagement dans lequel, suite à un débat, vous
15 vous appellerez, il y a eu un débat sur la
16 traduction de certains termes. Je pense c'était
17 maître Ouimette qui avait posé la question. Et
18 suite à cette discussion-là, monsieur Clermont avait
19 indiqué qu'il arrivait à l'occasion qu'il pouvait y
20 avoir une ambiguïté dans la traduction. Bon. Et
21 cette traduction-là a mené à l'engagement 19, lequel
22 a fait l'objet d'une réponse. Et dans la réponse,
23 le Transporteur a proposé d'utiliser une
24 terminologie un peu différente mais il ne changeait
25 absolument pas les équations, c'était un changement

1 de termes. Le mot « *real-time horizon* » ou
2 « horizon temps réel » est devenu le mot
3 « programmation ». Bon.

4 Avant l'engagement 19, dans des réponses
5 à des demandes de renseignements, qui dataient du
6 mois de mai 2009, ces mêmes mots précisés se
7 trouvaient déjà dans la preuve. L'engagement aurait
8 pu simplement être une référence aux demandes de
9 renseignements et aux réponses données et tout ça,
10 c'est antérieur au rapport. Bon.

11 Je n'essaie pas de faire de la sémantique
12 mais ce que je comprends c'est que, à l'examen de
13 l'ensemble de l'oeuvre, des demandes de
14 renseignements, les témoignages, l'engagement 19,
15 tout étant là, évidemment présumant que la Régie est
16 satisfaite avec cette preuve-là, que l'intervenant
17 NLH en argumentation ne viendra pas contester la
18 proposition tarifaire du Transporteur parce qu'il se
19 déclare satisfait de notre proposition telle que
20 précisée dans les réponses aux demandes de
21 renseignements, telle que précisée à l'engagement
22 19.

23 Je ne peux pas limiter ça à un élément là.
24 Encore une fois là, à un moment donné, on se dit
25 c'est oui ou c'est non, est-ce qu'on conteste ou on

1 ne conteste pas. Là, à un moment donné là, je pense
2 qu'on devrait le savoir. La présentation ce matin
3 c'est qu'il ne conteste plus. Si c'est le cas, je
4 veux le savoir, on passe à autre chose et c'est
5 tout, Monsieur le Président. C'est une question qui
6 me paraît fort utile et qui assure une
7 administration efficace de la suite des choses.

8 LE PRÉSIDENT :

9 Alors, la Régie comprend votre question au témoin et
10 le témoin vous a répondu sa réponse.

11 Me ÉRIC DUNBERRY :

12 Et je demandais si c'était également la réponse de
13 l'intervenant parce que j'ai appris, Monsieur le
14 Président, qu'à l'occasion les experts ne lient pas
15 leurs clients. Et je veux simplement m'assurer que
16 lorsque monsieur Sinclair a fait sa présentation il
17 était autorisé par son client, NLH, à prendre la
18 position qu'il n'y avait plus difficulté avec la
19 question des horizons. Simplement confirmer cela.

20 LE PRÉSIDENT :

21 Mais vous posez votre question à qui, au témoin?

22 Me ÉRIC DUNBERRY :

23 Est-ce qu'il est autorisé? Je pourrais avoir un
24 « oui » du procureur et ça me satisferait, Monsieur
25 le Président, mais je vais poser la question à

1 monsieur Sinclair.

2 R. Can you ask it again, please?

3 Q.198 When you made the presentation this
4 morning, I assume that the entire
5 presentation, but let's focus now on the
6 slides 14, 15, I assume that when you made
7 the statement that, as you just repeated
8 this morning, as you just said again a
9 moment ago, that you no longer have an
10 issue with HQT's proposal in terms of
11 defining the equations for the three
12 horizons. I assume that you were making
13 that statement on behalf of your client,
14 NLH?

15 R. I never see myself as making statements on
16 behalf of my client. But I think my
17 client is in agreement with that, with
18 this position.

19 Q.199 Okay.

20 Alors, Monsieur le Président, c'est juste
21 simplement là que je ne vais pas poser les questions
22 mais si en argumentation on me dit que ce n'est pas
23 un témoignage qui lie la partie, j'aurai renoncé à
24 certaines questions et j'en serai bien malheureux et
25 je vous le dirai.

1 Alors, je prends pour acquis que, en
2 l'absence de contestation de NLH, nous avons ici une
3 représentation du client.

4 Me ANDRÉ TURMEL :

5 Monsieur le Président, simplement pour vous assurer,
6 la fin de la journée approche, mais on va simplement
7 vouloir relire les notes sténographiques de ce
8 matin, parce que mon confrère fait référence à la
9 présentation de ce matin, on voit bien les pages qui
10 sont là, mais à ce qui a été dit ce matin,
11 honnêtement, nous aimerions peut-être prendre le...
12 de toute façon, je pense que mon confrère va pouvoir
13 continuer demain, mais seulement pour vérifier avec
14 ce qui a été dit ce matin si ça coïncide bien avec
15 l'état des lieux à l'égard de cette question au
16 moment où on se parle. Et il y a une ambiguïté là
17 que je ne saurais dire aujourd'hui à mon confrère
18 puis je vais le dire rapidement, il se peut que ça
19 soit réglé de toute façon demain matin à 9 h 00 mais
20 je préfère le vérifier. Donc, sous cette réserve.

21 Me ÉRIC DUNBERRY :

22 O.K. Évidemment, Monsieur le Président...

23 Q.200 Mr. Bennett, you've been... Mr. Bennett,
24 maybe all of this... you're the client,
25 you're in the end the boss as we say, you

1 heard my discussion with your expert,
2 perhaps that could simplify matters.
3 Would you agree, can you agree, do you
4 have an opinion on what your expert said
5 and can you confirm whether you, as the
6 client, NLH, agree with Mr. Sinclair's
7 position that there is no longer a problem
8 with the three horizons defined in HQT's
9 proposal?

10 M. GILBERT BENNETT :

11 R. I think, you know, on that point, I go
12 back to the same question about exactly
13 what was said and making sure that we have
14 a complete and common alignment and
15 understanding as to what's reflected on
16 the transcript.

17 Me ÉRIC DUNBERRY :

18 So, Monsieur le Président, je reviendrai demain, si
19 la question devient plus complexe.

20 LE PRÉSIDENT :

21 La Régie permet à NLH de vérifier sur la base des
22 notes sténographiques et de confirmer en début
23 d'audience demain sa position finale et réserve vos
24 droits de questionner au besoin.

25 Me ÉRIC DUNBERRY :

1 Merci, Monsieur le Président.

2 Q.201 Mr. Sinclair, I will now want to move to
3 a different section of your report, page
4 35, and keep your presentation not far
5 because I'm going to refer at the same
6 time on pages 43, 44 and 45 of your
7 presentation.

8 So, page 35 of your report, and
9 again, feel free to read all of that
10 section but my questions are more focused.
11 There is a fairly long paragraph starting
12 at line 8, ending at line 23, and you
13 discuss in that paragraph the notion of
14 data exchange. And line 19, you sum up by
15 saying that:

16 « FERC 890
17 requirements envision
18 a more meaningful data
19 exchange that includes
20 participation by
21 transmission customers
22 and introduces
23 transparency to the
24 underlying ATC
25 calculation. »

1 You maintain that statement, I assume?

2 Dr ROBERT SINCLAIR :

3 R. Yes.

4 Q.202 Now, from page 35 to 37, there is a fairly
5 long discussion going back to Mr. Hanser's
6 report. And one reading the entire
7 section is left with the impression that
8 you are concluding that HQT has failed to
9 conduct a proper exchange of data and has
10 failed to satisfy, reviewing its evidence,
11 FERC Order 890 with respect to the data
12 exchange requirement.

13 R. That's correct.

14 Q.203 Do you want to maintain that statement?

15 R. Yes.

16 14H08

17 Q.204 Now, let me start by asking you, could you
18 identify - because you're again using an
19 example and we'll use your example -
20 you're referring to the HQT-New England
21 intertie in your report as an example, so
22 I will be using that one but we can use
23 another one if you want.

24 Could you identify the facts on which
25 you rely to say that HQT has not properly

1 exchanged data with a neighbouring system
2 in order to arrive at, let's say, the 2009
3 ATC coordination initiative? What are the
4 data? What are the facts on which you're
5 relying to conclude that my client has
6 failed to perform the proper data exchange
7 with New England ISO, for instance?

8 R. Well, I think what I'm saying, is your
9 client has failed to propose the proper
10 data exchange and I think I spelled it out
11 pretty clearly on page 37 where I cite
12 paragraph 310, this is line 7, and the
13 FERC explains there that there is a
14 substantial list of data that should be
15 exchanged between neighbouring systems to
16 improve the ATC values on the borders.

17 And when I look at what Mr. Hanser is
18 proposing to exchange, there is only...
19 really he is only proposing to exchange
20 firm capacity data and TRM data. That's
21 also reflected in Attachment C-1.

22 Q.205 So, your testimony is that HQT will in the
23 future fail to conduct proper data
24 exchange. You're not saying that in the
25 past, like referring to your example of

1 HQT-New England intertie? You're not
2 saying that we failed in the past to
3 conduct proper data exchange through a
4 number of mechanisms and environments.
5 But you're saying that we will fail in the
6 future to conduct the proper data
7 exchange. Is that what you're saying?

8 R. Yes, if you don't have the proper
9 Attachment K, you will fail to meet the
10 Order 890 principles.

11 Q.206 Now, when you look at the HQT-NE intertie,
12 is this an AC or a DC intertie?

13 R. That's a DC.

14 Q.207 It is DC. So, in that context, taking
15 page 37 of your report, and taking page 44
16 of your presentation, I believe it's 44,
17 the one you just referred to, yes, 44, for
18 a DC intertie, for instance, is it your
19 testimony that we have to exchange the
20 information identified by item 3, item 4
21 and item 7?

22 R. You're referring to that quoted passage in
23 my testimony?

24 Q.208 And to your presentation. I was taking my
25 time...

1 R. Okay.

2 Q.209 ... to compare both at the same time but
3 I believe items 3, 4 and 7 are the same
4 items. So, are you saying that for a DC
5 intertie, for instance, in the case, most
6 of our interties are DC as you probably
7 know by now.

8 R. I know.

9 Q.210 Are you saying that we would be failing
10 the FERC requirement for data exchange if
11 we fail to provide data for 3, 4 and 7?

12 R. Well, I don't really make a distinction
13 between AC and DC in my testimony.

14 Q.211 No, I know, but in the real world, there
15 is a fairly significant distinction
16 between AC and DC, right? When we
17 exchange data, we have to be in the real
18 work and in the real world, would it be a
19 failure not to exchange items 3, 4 and 7?

20 Me ANDRÉ TURMEL :

21 Je vais m'objecter ici à cette question, Monsieur le
22 Président. L'expert que vous avez reconnu ce matin,
23 sur ce passage-là en plus, là, on est dans des
24 questions purement d'ingénierie et le commentaire
25 qu'il a fait tout à l'heure, c'est que bel et bien

1 c'est à l'égard de ce qui est proposé et, là, on
2 demande au... premièrement, il n'a pas écrit sur...
3 le témoin Sinclair n'a pas écrit sur la réalité
4 actuelle de chacune des interconnexions,
5 premièrement.

6 Deuxièmement, à l'égard de ce qui est
7 principalement discuté ici, sauf erreur, c'est
8 vraiment à l'égard de ce qui a été proposé. Et
9 quand vous regardez la page 44 de la page
10 PowerPoint, c'est vraiment:

11 « *Compare proposed HQT*
12 *OATT to Order 890.* »

13 Alors, là, mon confrère est en train d'amener le
14 témoin à dire oui, à totalement... pas sur le sujet
15 qui est discuté mais de faire des distinctions
16 techniques qui ne font pas du tout l'objet de sa
17 preuve, premièrement. Il n'en a pas parlé.

18 Et le témoin a bien expliqué que c'est de
19 manière prospective puisque nous sommes ici en
20 *policy*. On est ici pour faire une comparaison entre
21 ce que vous allez adopter pour le futur face à ce
22 que la FERC a déjà adopté, non pas pour refaire le
23 test technique de chacune des interconnexions.

24 Alors, je m'objecte à la question telle
25 que formulée. Nous embarquons dans un domaine

1 technique. qui n'est pas ici abordé par la preuve.
2 Me ÉRIC DUNBERRY :
3 Monsieur le Président, je réfère directement à la
4 présentation du témoin. Je réfère directement à son
5 rapport. Il a indiqué que, à son avis, la
6 proposition du Transporteur - et ce n'était pas
7 clair si c'était une accusation pour le passé ou
8 pour l'avenir. Là, on a compris de son témoignage
9 qu'il ne dit pas que nous avons fait défaut dans le
10 passé mais il dit qu'on va faire défaut dans le
11 futur. Il prévoit que nous allons être en défaut
12 dans le futur si nous n'adoptons pas les sept ou
13 huit éléments, là, qui sont dans son tableau comme
14 étant les éléments requis par FERC.

15 Et je lui pose la question dans le cadre
16 d'une interconnexion particulière et au Québec les
17 interconnexions DC il y en a plus qu'une, Monsieur
18 le Président, vous le savez, si le fait de ne pas
19 échanger les éléments, par exemple, 3, 4, et 7 mène
20 à un défaut quelconque d'échange de données?

21 Et la réponse qu'il nous dit, c'est bien
22 dans mon rapport je n'ai pas traité de l'écart entre
23 AC et DC. Je me sers de son exemple qui est HQT-NE
24 puis je lui dis prenons cet exemple-là, est-ce qu'il
25 y aurait eu... parce qu'il réfère spécifiquement à

1 son exemple dans son rapport.

2 Alors, Monsieur le Président, je pense
3 encore une fois que mon collègue, avec beaucoup
4 de... je comprends ce qu'il fait, mais ce n'est pas
5 permis, c'est-à-dire d'intervenir sans cesse en
6 fournissant des éléments qui ne permettent pas de
7 contre-interroger de façon utile.

8 Alors, encore une fois, je pense que la
9 question est très claire et elle est très pertinente
10 et elle vous permet d'apprécier si ce qui est dans
11 le rapport vous est utile ou non.

12 LE PRÉSIDENT :

13 Maître Turmel.

14 Me ANDRÉ TURMEL :

15 Bien, on s'objecte toujours à la question telle que
16 formulée. Mon confrère va se mettre dans une
17 recherche des comparaisons techniques de chacune des
18 interconnexions. Nous ne sommes pas dans un dossier
19 de fiabilité ici. Nous ne sommes pas dans un
20 dossier de plainte ici. Nous sommes dans un dossier
21 où on regarde prospectivement la fixation des tarifs
22 et conditions pour comparer des textes et comparer
23 ce que les textes prévoient.

24 Alors, s'il veut parler de différences à
25 l'égard des points 3, 4 ou 7 qu'il nous identifie

1 dans les passages de la FERC là où ces
2 distinctions... dans le passage de FERC 890-A, B, C
3 là où ces distinctions sont faites et, là, on sera
4 de retour dans le point qui est en discussion.

5 Alors, à moins qu'il nous indique ces
6 points... chacun de ces points-là ont été discutés,
7 il y a une composante technique à ceci, on s'oppose
8 parce que sinon on ne s'en sortira pas.

9 Me ÉRIC DUNBERRY :

10 Monsieur le Président, ce qui est pour le moins
11 ironique...

12 LE PRÉSIDENT :

13 Pour ce qui est de cette ligne de questions là, la
14 Régie va permettre la question dans le sens où
15 qu'elle soit formulée de façon générale et que le
16 témoin explique les éléments qu'il a pris en
17 considération pour émettre ses propositions à la
18 Régie et la Régie comprend qu'elle n'établira pas un
19 tarif par interconnexion, elle va établir un tarif
20 général.

21 Donc, l'exemple de NE peut être pris mais
22 le tarif devra s'appliquer à tous, donc que le
23 témoin précise les éléments qu'il a pris en
24 considération, est-ce qu'il a pris en considération
25 des éléments... ces éléments techniques là ou pas et

1 une fois cela dit, ce sera la preuve du témoin.

2 Me ÉRIC DUNBERRY :

3 Q.212 Mr. Sinclair, you know that most
4 interconnections in Québec are DC, right?
5 You know that?

6 R. Yes.

7 Q.213 You do. So, when you say on page 44 of
8 your report that TransÉnergie will in the
9 future fail to comply with FERC
10 requirement on data exchange if there is
11 no consideration for the various elements
12 on page 44, the... 44 of the presentation,
13 you're right. If there is no
14 consideration given to the items on page
15 44 and you have listed seven items there,
16 would you agree with me that for DC
17 interties there is no need to consider
18 items 3, 4 and 7?

19 R. With respect to DC interties, it is the
20 case that conditions on neighbouring
21 systems are less important than on an AC
22 intertie. However, I think in a tariff of
23 general applicability to all interfaces,
24 there should be a baseline data exchange
25 like I'm proposing here and I point out.

1 And if there are engineering reasons that
2 some data is not necessary, then I think
3 engineers can determine that between the
4 two control areas.

5 Q.214 So, data exchange is a matter of fact. In
6 fact, you have to look at circumstances on
7 any given intertie. And when responsible
8 people exchange and meet, they could
9 probably determine what has to be
10 exchanged and what need not be exchanged.
11 Would you agree that's a question of
12 circumstances and a fact?

13 R. I think FERC allowed for that, yes.

14 Q.215 So, your answer to my question is yes?

15 R. Yes.

16 Q.216 Okay. I'd like to go to the facts and ask
17 you a couple of questions and this will
18 start with HQT-24, document 2 that we will
19 exhibit to you.

20 R. I'm not sure I have that.

21 Q.217 This is an exhibit that we filed in June
22 2010.

23 R. Okay.

24 Q.218 I have additional copies if someone...
25 Monsieur le Président, si vous voulez...

1 HQT-24, document 2.

2 R. Okay. This is from Mr. Rose, right?

3 Q.219 So, you have seen this document before?

4 R. Yes.

5 Q.220 Did you review this document prior to the

6 filing of your report?

7 R. Yes. No, no. Yes, I did. Yes, I did.

8 Q.221 You recall seeing this one?

9 R. Yes.

10 Q.222 If you look at page 4 of 4... well, let me

11 start with the first. You recognize this

12 document. It is a description of the

13 meetings, a general description of the

14 type of meetings that are held with

15 neighbouring systems and they are

16 referenced here to Asset Owner Agreements

17 and meetings and on page 4 there is a

18 reference to the Interconnection

19 Agreements and the meetings that come with

20 that. You took cognizance of that report?

21 R. Yes.

22 Q.223 Of that document. Now, you see that on

23 page 4, there is a reference to the

24 typical agenda and that typical agenda

25 refers to TTC and limits. So, do you have

1 any reason to believe or indication that,
2 you know, this typical agenda is not
3 accurate and that TTCs and limits and
4 related issued are not typically discussed
5 in these exchanges and meetings?

6 R. No, I have no reason not to believe that.

7 Q.224 Okay.

8 Me ANDRÉ TURMEL :

9 Juste une question, quand vous dites typical agenda,
10 je veux juste bien comprendre, là, le sens de...

11 Me ÉRIC DUNBERRY :

12 Monsieur le Président, encore une fois, là, je fais
13 un exercice difficile avec mon collègue. Le mot
14 « typical » est dans la pièce.

15 Me ANDRÉ TURMEL :

16 O.K.

17 Me ÉRIC DUNBERRY :

18 C'est à la ligne 20.

19 Me ANDRÉ TURMEL :

20 O.K.

21 Me ÉRIC DUNBERRY :

22 Et ça commence:

23 « A typical agenda
24 would include... »

25 Ça convient, Maître Turmel?

1 Me ANDRÉ TURMEL :

2 Oui, merci. C'est clair.

3 Me ÉRIC DUNBERRY :

4 Q.225 I would like now to refer you to a
5 transcript of the presentation in chief
6 made by Mr. Clermont on October the 18th,
7 2010. My understanding is that you do not
8 recall if you were there or not there on
9 that specific day.

10 R. Yes, I don't recall.

11 Q.226 You don't. Well, I will read something to
12 you and you tell me whether it has any
13 impact on your assessment of the
14 situation.

15 So, we have additional copies,
16 Monsieur le Président, pour simplifier la
17 vie de tous si vous le jugez nécessaire.

18 R. Thank you.

19 Q.227 Mr. Sinclair, I will read this in French.
20 So you have your earset already, so that
21 is useful. So, page 128, this was a long
22 answer to one question which was Mr.
23 Clermont, could you summarize your views?
24 And the answer continued and on page 128,
25 Mr. Clermont said, line 11:

1 *« La mise en oeuvre de*
2 *la coordination s'est*
3 *faite, a été précédée*
4 *de beaucoup d'échanges*
5 *avec les réseaux*
6 *voisins dans lequel le*
7 *Transporteur a fait*
8 *des études, a eu des*
9 *discussions avec tous*
10 *les voisins pour,*
11 *d'une part, en fait...*
12 *le premier objectif,*
13 *c'était de faire*
14 *monter les capacités*
15 *du côté des réseaux*
16 *américains puisque*
17 *typiquement nos*
18 *capacités à nous*
19 *étaient toujours*
20 *supérieures à celles*
21 *affichées par les*
22 *réseaux américains, et*
23 *donc il y a eu*
24 *plusieurs études de*
25 *faites pour voir*

1 *comment ces valeurs-là*
2 *pouvaient être*
3 *changées. Donc, ça a*
4 *précédé la mise en*
5 *oeuvre de la*
6 *coordination telle*
7 *qu'elle est décrite à*
8 *l'Appendice C-1. »*

9 14H23

10 Now, I assume that you did not obtain
11 a translation of that transcript, is that
12 fair, for the purpose of our discussion?

13 R. That's right, I don't remember seeing
14 that.

15 Q.228 Okay. Now, you heard what Mr. Clermont
16 said, essentially, he said that prior to
17 the July 2009 ATC coordination, he had
18 many exchanges and studies were performed.

19 Now, would these be the kind of
20 discussions and exchanges and studies that
21 would qualify for satisfaction of FERC
22 requirements for data exchange prior to an
23 ATC coordination?

24 R. No, I don't think so. As I understand
25 these, I understand all control areas have

1 these interconnection agreements and... I
2 forget what you call them but...
3 interconnection agreements and asset owner
4 agreements, I mean these are fairly common
5 between all RTOs and between control
6 areas.

7 So, no, I don't see that as a process
8 that will lead to effective data exchange
9 and coordination as envisioned in Order
10 890. Order 890 requires a process of
11 incorporating stakeholders, allowing them
12 to be involved early in the process,
13 allowing them to be taken into account.

14 I see here the asset owners
15 agreement, for instance, will only involve
16 transmission owners. That would leave out
17 important market participants. The
18 interconnection agreements, that does
19 important things but it doesn't really get
20 to raise the level of the Order 890
21 planning principles and data exchange
22 principles.

23 Q.229 Maybe I was not clear, Mr. Sinclair. I am
24 not referring anymore to HQT-24, page 4 of
25 4. I am referring to what actually took

1 place in July 2009. Could you describe
2 for us what actually took place on July...
3 do you know what happened in July 2009?
4 R. Are you referring to the meeting that Mr.
5 Clermont attended?
6 Q.230 No, I'm referring to the ATC coordination.
7 How many interconnections are in between
8 Québec and the neighbouring systems, do
9 you know?
10 R. Yes, I know how many.
11 Q.231 How many?
12 R. There's one with... there's two with New
13 England, there's I think two with New
14 York, one with Ontario. I think there's
15 five or six, I don't know the exact
16 number.
17 Q.232 No. Do you know if they were all
18 coordinated in July 2009? What is your
19 understanding of what happened in July
20 2009?
21 R. I don't know, I didn't really pick up all
22 the facts in that blurb there.
23 Q.233 So, you don't know what happened in July
24 2009, right?
25 Me ANDRÉ TURMEL :

1 Il y a beaucoup de... objection peut-être à cette
2 question.
3 Me ÉRIC DUNBERRY :
4 Monsieur le Président, là, ça...
5 Me ANDRÉ TURMEL :
6 Oui, écoutez là, vous n'aimez pas ça mais je peux
7 m'objecter, d'accord?
8 Me ÉRIC DUNBERRY :
9 Bien, c'est parce que le problème c'est que vous ne
10 vous objectez pas.
11 Me ANDRÉ TURMEL :
12 Bien oui.
13 Me ÉRIC DUNBERRY :
14 Ce que vous faites c'est de l'interférence.
15 Me ANDRÉ TURMEL :
16 Non, parce qu'un instant là. Vous demandez...
17 LE PRÉSIDENT :
18 Maître Turmel...
19 Me ANDRÉ TURMEL :
20 ... qu'est-ce qui s'est passé en juillet 2009...
21 LE PRÉSIDENT :
22 Maître Turmel, votre objection?
23 Me ANDRÉ TURMEL :
24 Oui. Alors, la question c'est savez-vous ce qui
25 s'est passé en juillet 2009? En juillet 2009, il

1 s'est passé certainement bien des choses dans le
2 mois au Québec, en Nouvelle-Angleterre. A quoi
3 fait-on référence exactement? Si je vous demande,
4 tu sais, que s'est-il passé en l'année 2009, c'est
5 très très large. Alors, peut-être qu'il peut être
6 plus spécifique.

7 Si ça fait référence à ce qui a été
8 discuté ce matin, eh bien, ça fait partie de la
9 liste des éléments chronologiques qui doit être
10 fournie aux questions qu'il a posées ce matin à
11 l'égard de la plainte de Brookfield ou ce que
12 Brookfield a amené dans le présent dossier, c'est
13 peut-être partie. Mais là il réessaie, je ne sais
14 pas s'il fait allusion à cela, à l'annonce par HQT
15 de ce qui a été fait en 2009, mais assurément qu'il
16 soit peut-être un peu plus spécifique parce que
17 savez-vous ce qui s'est passé en juillet 2009? S'il
18 répond non, il est bien prudent de répondre non, il
19 ne le sait pas.

20 Alors, qu'on soit un peu plus spécifique,
21 la question m'apparaît un peu trop large. Donc, je
22 m'objecte.

23 Me ÉRIC DUNBERRY :

24 Alors, Monsieur le Président, je pense que tous
25 auront compris que je réfèrais aux événements liés

1 à l'objet de mon interrogatoire, c'est-à-dire la
2 coordination des ATC de juillet 2009. Et je dirais
3 également que monsieur Sinclair en traite
4 spécifiquement dans son rapport en référant à la
5 situation de Brookfield.

6 Alors, je prends pour acquis que ma
7 question était claire, si elle ne l'était pas...

8 Q.234 Mr. Sinclair, I will rephrase my question.
9 Have you reviewed... do you have personal
10 knowledge of what ATC coordination
11 initiative was in fact implemented by
12 TransÉnergie in July 2009 with any
13 details?

14 R. I've heard some allusions to it but I
15 never saw the need to actually look into
16 it because I didn't think it arose out of
17 a process that is sufficient to address
18 some of the important points in this case.

19 You know, with a lot of these
20 processes, you can't have somebody speak
21 to the totality of the processes in Québec
22 and also expect them to be involved in all
23 the processes in Québec. There may be one
24 or two people, you know, Mr. Clermont may
25 be one of them that is able to attend all

1 these processes and has knowledge,
2 intimate knowledge of all the processes.
3 But for someone to speak to a general:
4 « Yes, the processes in Québec meet the
5 Order 890 standards. » or « No, they don't
6 meet the Order 890 standards. » almost
7 necessarily cannot be somebody who is so
8 in-depthly involved in any one of those
9 processes. Like Mr. Rose, for instance,
10 he's not involved in any one of those
11 processes to a great depth but he's able
12 therefore to comment on the general
13 processes.

14 Q.235 Okay.

15 R. So, the fact that I may not have been at
16 that meeting in July or may not have
17 buried myself in all the facts I think is
18 irrelevant to whether I can make a
19 judgement about the nature of these
20 agreements.

21 Q.236 So, what you're saying to us is it's
22 irrelevant for you to know the facts with
23 respect to the Brookfield situation even
24 though it's directly addressed in your
25 report?

1 R. I think I don't need to know every single
2 fact with the Brookfield situation.

3 Q.237 I'm not saying any single fact or every
4 single fact. I understand that you have
5 not done any personal review of the facts
6 relevant to the Brookfield situation...

7 R. Well, I didn't say that.

8 Q.238 ... in relation to the data exchange?

9 LE PRÉSIDENT :

10 Ici, juste... la Régie comprend que ce meeting-là
11 sur la question de l'harmonisation des ATC n'était
12 pas une discussion sur Brookfield; c'était une
13 discussion entre Hydro-Québec et peut-être le réseau
14 voisin pour l'harmonisation des ATC. Mais est-ce
15 que la Régie se trompe? Parce que vous faites
16 beaucoup allusion à l'événement Brookfield qui a été
17 une plainte logée par la suite, suite aux décisions
18 prises le Transporteur. Mais parce que la...

19 Me ÉRIC DUNBERRY :

20 Je réagis, Monsieur le Président, aux réponses du
21 témoin, évidemment. Le témoin répond qu'il n'a pas
22 à avoir une connaissance personnelle des faits
23 relatifs à certaines situations. Je lui rappelle
24 que son rapport traite spécifiquement de la
25 situation de Brookfield comme un exemple de

1 discrimination.

2 LE PRÉSIDENT :

3 Ce dont nous avons parlé ce matin.

4 Me ÉRIC DUNBERRY :

5 Ce dont nous avons parlé ce matin. Mais je réagis
6 à sa question. Et par ailleurs...

7 Q.239 Mr. Sinclair, let me come back to my
8 earlier question. I am no longer in the
9 document describing the various meetings
10 that we saw. I am in the transcript, I am
11 in the testimony of monsieur Clermont.

12 And monsieur Clermont says
13 specifically that before... and he's not
14 referring to one of the meetings to which
15 reference is made here in HQT-24. He says
16 that before doing this ATC coordination in
17 July 2009, he had many exchanges and
18 studies were made, studies were made and
19 exchanges were... again, I'm not in that
20 context.

21 R. Okay.

22 Q.240 Now, I am in the reality of what took
23 place. Now, would these kinds of
24 exchanges and these kinds of studies
25 qualify as being relevant for purposes of

1 assessing whether TransÉnergie complied
2 with FERC requirements?

3 R. I can't tell from what he said.

4 Q.241 And you can't tell because what, because
5 you need the facts, right?

6 R. Because I wasn't... I don't know what
7 studies he's talking about, I don't know
8 what meetings he's talking about.

9 Q.242 But aside from what was actually said,
10 would these kinds of meetings, these kinds
11 of exchanges, be relevant?

12 R. Well, again, these kind of meetings take
13 place all the time across North America
14 and despite that FERC has still found that
15 there is a need for further coordination
16 of planning, further integration of
17 customers in the planning process. So, I
18 would say it's important and I think it's
19 good but it's not sufficient.

20 Q.243 But since you don't know what studies were
21 performed and what discussions took place,
22 you cannot say it was not sufficient or
23 whether it was sufficient, you just don't
24 know what was actually taking place,
25 right?

1 R. Well, if it went beyond the typical asset
2 owners agreements, interconnection
3 agreements, then it's possible but there
4 was no evidence presented that went beyond
5 the typical issues addressed in those
6 meetings.

7 Q.244 Have you reviewed the evidence that was
8 presented before the Régie with respect to
9 these meetings?

10 R. I don't know. I don't know what you're
11 referring to.

12 Q.245 You don't know... because you just said a
13 moment ago that the evidence you saw was
14 not sufficient. Now I'm asking you did
15 you see the evidence that you're referring
16 to and your answer is what, you don't know
17 or you know if you reviewed the evidence?

18 R. Well, the only evidence I really saw was
19 what Mr. Rose put in here. And I'm
20 familiar with those types of agreements,
21 those types of activities, and as I said,
22 they occur everywhere and have implicitly
23 been deemed to be insufficient by FERC.

24 Q.246 I would like now to refer you to another
25 transcript, volume 2, October 19. That

1 was an examination conducted by
2 Brookfield. And I understand from our
3 previous discussion that you have no
4 recollection of seeing a translation of
5 this examination. Maybe you did, maybe
6 you didn't, but you can't confirm whether
7 you had a translation of that discussion
8 between maître Paule Hamelin and Mr.
9 Clermont? Page 72 and following.

10 R. Yes, I can't recall if I was here on the
11 19th of October.

12 Q.247 Well, on page 72, there was evidence
13 introduced with respect to a number of
14 things but I will just read some of that
15 and I won't read all of it but I'll give
16 the reference for the Régie. So, if you
17 want to put your earset I will read this
18 for you. Alors, maître Hamelin,
19 Brookfield's counsel:

20 « Alors, ma question,
21 Monsieur Clermont,
22 est-ce que le
23 Transporteur a, comme
24 on indique ici, entre
25 autres, exchanged data

1 *and assumptions avec*
2 *les réseaux voisins? »*

3 These are the words coming from FERC
4 requirements.

5 *« Donc, a-t-il échangé*
6 *des donnés, des*
7 *hypothèses, des*
8 *informations avec les*
9 *réseaux voisins? »*

10 Answer:

11 *« Yes. »*
12 *« Pouvez-vous me dire*
13 *la nature des*
14 *informations qui ont*
15 *été échangées avec les*
16 *réseaux voisins? »*

17 Answer:

18 *« La compréhension des*
19 *méthodes et des*
20 *valeurs utilisées et*
21 *des processus utilisés*
22 *par les réseaux*
23 *voisins, dans un*
24 *premier temps pour*
25 *nous permettre de*

1 *comprendre comment on*
2 *pouvait, nous,*
3 *implanter cette*
4 *coordination. Par la*
5 *suite, les discussions*
6 *avec nos hypothèses de*
7 *travail. Et bien sûr,*
8 *les données pour...*
9 *les données utilisées*
10 *par les réseaux*
11 *voisins ainsi que les*
12 *nôtres.*
13 *Et quand on parle de*
14 *réseaux voisins, est-*
15 *ce que ça s'est fait*
16 *effectivement avec*
17 *tous les réseaux*
18 *voisins, puis je vais*
19 *essayer de les nommer.*
20 *De mémoire, Ontario,*
21 *Nouveau-Brunswick - je*
22 *vais les noter en même*
23 *temps sinon je vais*
24 *les oublier* -
25 *Ontario, Nouveau-*

1 *Brunswick, Nouvelle-*
2 *Angleterre, New York,*
3 *j'en oublie-tu? Je*
4 *n'ose pas dire le mot*
5 *Labrador parce qu'il*
6 *va peut-être y avoir*
7 *une objection, mais je*
8 *vais le faire quand*
9 *même. Est-ce que*
10 *cette nature*
11 *d'échanges*
12 *d'informations a été*
13 *faite avec tous ces*
14 *voisins? »*
15 Et là on réfère à différents réseaux.
16 Réponse au bas de la page:
17 « Elle a été faite.
18 Il y a eu des
19 discussions
20 effectivement avec
21 tous ceux-là, sauf
22 Labrador. Et les
23 discussions, je dois
24 dire, ont été
25 principalement entre

1 *Nouveau-Brunswick,*
2 *Nouvelle-Angleterre et*
3 *New York. La raison*
4 *étant que, en Ontario,*
5 *il y a une*
6 *interconnexion qui*
7 *vient tout juste,*
8 *majeure, qui vient*
9 *tout juste d'être mise*
10 *en service. Et bien*
11 *sûr, de part et*
12 *d'autre, les réseaux*
13 *ont été, étant donné*
14 *qu'on vient de faire*
15 *les ajouts aux*
16 *réseaux, ils ont été*
17 *conçus pour refléter*
18 *des valeurs*
19 *semblables.*
20 *Puis dans le cas des*
21 *autres inter-*
22 *connexions avec*
23 *l'Ontario, pas besoin*
24 *de vous dire qu'ils*
25 *sont tous extrêmement*

1 *particulières, alors*
2 *le problème se posait*
3 *peu ou pas.*
4 *C'est donc*
5 *principalement*
6 *New York, Nouvelle-*
7 *Angleterre et Nouveau-*
8 *Brunswick, oui. »*

9 Now, this examination continues from
10 question 116 to 128. And there is a
11 general discussion of... and that was a
12 cross-examination by maître Hamelin...
13 there was a general discussion about the
14 kinds of exchanges that took place in
15 relation to FERC requirements.

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17 Do you think that these kinds of
18 exchanges are relevant, Mr. Sinclair, to
19 satisfy FERC's requirement?

20 R. To satisfy planning principles in Order
21 890?

22 Q.248 I am not in the planning principles. I am
23 in FERC's requirement for ATC consistency
24 and there is a section in that we just
25 read that refers to data exchange and ATC.

1 I'm referring to FERC's requirement. I am
2 not in the section of FERC's decision
3 dealing with open planning. Right?

4 Most of your answers to my questions
5 are going back to open planning but we're
6 not talking about open planning right now.
7 We're talking about the FERC requirement
8 with respect to ATC coordination and data
9 exchange.

10 Do you think that this testimony of
11 Mr. Clermont describing exchanges with all
12 the interconnected networks, with
13 exceptions and he explains why, do you
14 think any of that evidence would be
15 relevant to determine whether TransÉnergie
16 has satisfied and if they continue doing
17 that, will satisfy the data exchange
18 requirement?

19 R. I would have to look at this more closely.

20 Q.249 Okay. You have not?

21 R. I don't remember seeing this, no.

22 Q.250 Okay. But this is a description of
23 exchanges that took place. My question is
24 the following, do you think it is
25 relevant, when you look at data exchange,

1 to actually consider the data exchange or
2 you find that fact irrelevant?

3 R. Well, I think when you say relevant with
4 respect to whether the current exchange
5 meets the Order 890 principle. Is that
6 what you're saying?

7 Q.251 I'm asking you whether the actual hard
8 evidence of exchanges taking place is
9 relevant to the issue whether TransÉnergie
10 has and will continue to satisfy the data
11 exchange requirements?

12 R. I mean, it sounds logical, yes.

13 Q.252 Yes. Now...

14 R. But we asked Mr. Hanser in several data
15 responses whether the exchange of data
16 that he is proposing are the ones intended
17 to meet the coordination requirements and
18 he answered in the affirmative.

19 Q.253 We'll come to that.

20 R. Okay. So, going by that, it seems like it
21 wasn't...

22 Q.254 I'd like to refer to more evidence, HQT-
23 41, document 1.1. These are the minutes.
24 And before I can actually give it to you,
25 I have to ask you a question. Maybe your

1 memory will come back on this.

2 This is, for the record, a document
3 which is produced confidentially. It is
4 HQT-41, document 1.1. It was a response
5 to an undertaking called *Extrait de compte*
6 *rendu de réunion avec ISO New England,*
7 *coordination de l'ATC.*

8 I will simply show you the first page
9 of that document and then we'll see what
10 we can do. HQT-41, document 1.1 There
11 are enough notes, you can see. HQT-41...
12 il a été déposé sous pli confidentiel.
13 So, before we do anything with the
14 document...

15 Me ANDRÉ TURMEL :

16 C'est l'engagement 2 ça?

17 Me ÉRIC DUNBERRY :

18 C'est l'engagement 2.

19 Q.255 Now, I am told, Mr. Sinclair, that your
20 client NLH has had access to these minutes
21 of meetings and that Messrs. Chris Kirby,
22 Johanna Harris, Pierre Plante, Pierre-
23 Olivier Charlebois and André Turmel all
24 signed a confidentiality Agreement but it
25 appears that you did not sign a

1 confidentiality agreement.

2 R. Okay, that sounds like it's true.

3 Q.256 It sounds like?

4 R. It sounds true. I don't remember.

5 Q.257 It sounds true.

6 R. Yes.

7 Q.258 So, I assume that your client, and

8 everybody but you had access, it sounds?

9 Everybody but you had access to a document

10 which provide minutes of meetings dealing

11 with ATC coordinations. Now you did not

12 see that document, I assume, because you

13 didn't sign the confidentiality agreement.

14 Is that correct?

15 R. I can't see the document.

16 Me ANDRÉ TURMEL :

17 Peut-être qu'on pourrait simplement - je comprends

18 ce qu'il fait - mais peut-être au moins, comme le

19 témoin n'est pas en contexte, il n'a pas vu le

20 document, c'est une réponse à l'engagement 2, peut-

21 être de refaire... d'expliquer ou de... alors,

22 premièrement donc, de la façon dont c'est posé je

23 vais m'objecter simplement pour qu'il reformule pour

24 donner le contexte à ce qui était, parce qu'on parle

25 de l'engagement 2 ici et ça fait référence à des

1 notes sténo du 19 octobre 2010, peut-être juste nous
2 donner un peu... parce que manifestement il n'a pas
3 signé le document auquel vous faites référence. Il
4 m'apparaîtrait approprié que vous mettiez un peu de
5 contexte avant de lui demander d'opiner sur quelque
6 document que ce soit, s'il opine par ailleurs.

7 Me ÉRIC DUNBERRY :

8 Monsieur le Président, je n'ai pas l'intention de
9 lui faire voir le document qu'il ne peut pas voir
10 sans signer une entente de confidentialité. Alors,
11 ce que je vais simplement me contenter, c'est une
12 confirmation qu'il n'a pas reçu et vu ce document
13 tout simplement.

14 Me ANDRÉ TURMEL :

15 Mais simplement pour... avant que vous lui posiez la
16 question, peut-être lui donner le contexte, quelle
17 information était demandée, dans quel cadre
18 d'interrogatoire ou de contre-interrogatoire est-ce
19 que c'était fait pour qu'on le comprenne, là, ça se
20 situe dans quel contexte.

21 LE PRÉSIDENT :

22 Ici la Régie considère que de donner le minimum le
23 contexte, quelle était la question qu'avait fait
24 l'objet d'un engagement, on ne demandera pas de
25 dévoiler ce qui a été déposé sous pli confidentiel

1 mais quelle était la nature du débat et qui a donné
2 lieu à la prise d'un engagement, a répondu sous pli
3 confidentiel et, par la suite, il pourra répondre
4 s'il a pris connaissance de documents ou autres.

5 Me ÉRIC DUNBERRY

6 Q.259 Mr. Sinclair, this was a document that was
7 produced following a request for
8 information. It was an undertaking
9 during, I believe, a discovery, during the
10 examination of... it was of Sylvain...
11 maybe the details... veux-tu les donner?
12 C'est dans les notes sténographiques,
13 Monsieur le Président, auxquelles nous
14 avons référées il y a un instant, c'est-à-
15 dire la transcription de l'interrogatoire
16 de monsieur Clermont.

17 Me ANDRÉ TURMEL :

18 Excusez, juste pour comprendre. Moi, j'ai donné cet
19 engagement ici 1 à 7 et la 2, c'est ce que j'ai ici,
20 juste pour faire le lien avec ce dont vous parlez,
21 c'est-tu la même chose. Engagement...

22 Me ÉRIC DUNBERRY :

23 Je ne sais pas à quoi tu réfères.

24 Me ANDRÉ TURMEL :

25 Juste pour qu'on se comprenne, Monsieur le

1 Président, parce que mon confrère parle...

2 Me ÉRIC DUNBERRY

3 Q.260 Alors, Mr...

4 Me ANDRÉ TURMEL :

5 Vous me permettez? Je veux simplement comprendre
6 parce que moi j'ai un engagement 2 qui est beaucoup
7 plus court. J'ai ici, pour bien m'assurer que je
8 comprenne, donc, dans 3669, phase 2, il y a des
9 réponses du Transporteur aux engagements numéros 1
10 à 7, c'est HQT-41, document 1. Et à l'engagement 2
11 je vois qu'on fait référence à des notes
12 sténographiques du 19 octobre 2010. Et l'engagement
13 2 c'est fournir copies des minutes des rencontres
14 tenues et, là, la réponse 2, il y a un paragraphe et
15 le paragraphe c'est ce que l'on donne ici. Et vous,
16 c'est l'extrait.

17 Me ÉRIC DUNBERRY :

18 C'est les minutes.

19 Me ANDRÉ TURMEL :

20 C'est les minutes, O.K.

21 LE PRÉSIDENT :

22 Donc, comme la Régie a mentionné, elle apprécierait
23 qu'on résume brièvement quelle était la teneur de la
24 question posée qui a donné lieu à l'engagement puis
25 précisez les pièces parce que la Régie note qu'il y

1 a B-174 et B-175 qui réfèrent toutes les deux à la
2 réponse à l'engagement numéro 2 déposé sous pli
3 confidentiel. Donc clarifiez de quoi il s'agit au
4 juste, lequel des deux documents et quelle était la
5 question à laquelle le témoin a été demandé de
6 répondre.

7 Me ÉRIC DUNBERRY :

8 Je vais laisser ma collègue, maître Hivon, vous
9 donner une réponse plus détaillée que la mienne sera
10 parce qu'elle...

11 LE PRÉSIDENT :

12 Très bien.

13 Me ÉRIC DUNBERRY :

14 ... a consulté les documents.

15 Me MARIE-CHRISTINE HIVON :

16 Alors, pour les fins du dossier, il s'agissait d'un
17 engagement pris le 19 octobre 2010, donc volume 2,
18 à la page 85:

19 « Fournir copie des
20 minutes des rencontres
21 d'information tenues
22 avec les réseaux
23 voisins. »

24 Et la réponse à l'engagement 2 été produite en deux
25 temps, Monsieur le Président, pour les deux

1 interconnexions visées, donc il y avait ISO New
2 England et New York Independent System Operator.
3 Ces deux documents ou donc ces deux réponses ont été
4 fournies sous la cote HQT-41, document 1.1, HQT-41,
5 document 1.2. Ces documents ont fait l'objet d'une
6 demande de traitement confidentiel et certaines des
7 parties et certains des représentants des parties et
8 pas d'autres ont signé ces ententes.

9 Donc, au dossier de la Régie, je pense
10 qu'on a la page frontispice qui est simplement la
11 page couverture mais le contenu des documents a
12 été... a pu être consulté suite à la signature d'une
13 entente de confidentialité et lorsqu'il y a eu une
14 audition qui a porté sur le contenu, il y a eu une
15 huis clos et on a les notes sténographiques
16 seulement de ceux qui pouvaient y participer.
17 Voilà.

18 LE PRÉSIDENT :

19 Très bien. Donc, ça place bien le contexte.

20 Me ANDRÉ TURMEL :

21 C'est plus clair, merci.

22 Me ÉRIC DUNBERRY :

23 Q.261 So, Mr. Sinclair, you were given the
24 context for the communication of the
25 document. Can we end this line of

1 question by simply agreeing that you did
2 not receive a copy nor did you review
3 these documents?

4 R. That's right, I did not see that or review
5 it.

6 Q.262 And it would be the same answer for both
7 documents. There is one HQT-44, document
8 1.1 dealing with meetings and coordination
9 meetings with New England ISO and the
10 other document HQT-41, document 1.2,
11 refers to minutes of meetings with New
12 York ISO. The answer would be the same?

13 R. I did not see them.

14 14H49

15 Q.263 And my last question on this is that there
16 was an entire discussion on February the
17 11th, 2011 and a roll call was made and
18 those in attendance were identified and I
19 understand that you were not there on that
20 day.

21 R. That's right.

22 Q.264 Is that correct?

23 R. That's correct.

24 Q.265 And I assume that since you did not sign
25 a confidentiality agreement, you were not

1 given a copy of that transcript?

2 R. That's correct.

3 Q.266 So, all the evidence contained in these

4 three documents has not been considered by

5 yourself before testifying this morning?

6 R. That's correct. My testimony this morning

7 was just a summary of what I had testified

8 to in October.

9 Q.267 In October?

10 R. In September, in my report.

11 Q.268 In September 2010?

12 R. 2010.

13 Q.269 Yes. So, you did not consider any of the

14 evidence between September 23rd and this

15 morning?

16 R. I didn't see any new evidence, right.

17 Q.270 No but were you provided with any evidence

18 between September 23rd and yesterday or

19 this morning?

20 R. Not that I can recall related to that

21 issue.

22 Q.271 Or any other issues?

23 R. I think there was some testimony in

24 February that I thought was relevant to

25 expanding my opinions.

1 Q.272 Could you, by way of an undertaking,
2 identify for us what piece of evidence to
3 which you just referred? By way of
4 undertaking, I would ask the witness to
5 identify the evidence to which reference
6 was made a moment ago.

7 R. Well, I can just tell you, it's the
8 references I make in my presentation to
9 transcripts.

10 Me ANDRÉ TURMEL :

11 Peut-être pour éviter là, pour répondre à mon
12 confrère, donc quand vous regardez les passages de
13 la présentation PowerPoint de ce matin, quand
14 monsieur Sinclair fait référence au cross de
15 monsieur Clermont, c'est les dates du... février le
16 9.

17 Il était là à ces dates-là sauf le moment
18 bien sûr où il y a eu l'audience à huis clos. Et
19 vous avez ces dates-là qui apparaissent à plusieurs
20 reprises, là, le long des... je vais juste
21 rapidement vous situer. Ça apparaît aux pages,
22 notamment... bon, c'est Clermont cross, February 9,
23 2011, pages 87 à 111. C'est souvent là... c'est à
24 quoi il est fait allusion.

25 LE PRÉSIDENT :

1 Et vous êtes à quelle page de la présentation,
2 Maître Turmel?

3 Me ANDRÉ TURMEL :

4 Je suis à la page... attendez, 27, 28, 29. Donc,
5 page 29, page 30, il peut y avoir un décalage là,
6 31, 32, 33, et ça continue là dans les pages 30. Et
7 il y a au moins sept, huit pages où on fait
8 référence à monsieur Clermont, à son témoignage. Et
9 sauf erreur, je pense que ça complète. O.K., non,
10 bien, il y a monsieur Rose *cross* à la page 57, c'est
11 autre chose. Simplement pour terminer là, je pense
12 que ça fait le point. Également à la page 65.
13 Bien, pages 63, 64, 65, on fait référence au *cross-*
14 *examination*. Et enfin, je pense que ça complète le
15 tout, là, page 75 et suivantes. Dernière page,
16 bien, page 85 également, monsieur Clermont *cross*,
17 *Feb. 8, 2011* page 48. Le tout devrait y être. Ça
18 devrait répondre à l'engagement.

19 Me ÉRIC DUNBERRY :

20 Q.273 I understood your counsel, Mr. Sinclair,
21 indicate that the additional evidence that
22 you reviewed between September 23rd, 2010
23 and this morning was identified as
24 footnotes in your presentation?

25 R. That's correct.

1 Q.274 And you reviewed all that information
2 yourself?
3 R. Either I reviewed it myself by reading the
4 transcripts or I was at the hearing.
5 Q.275 So, for all these references, you were at
6 the hearing you say?
7 R. I think in fact all the references I was
8 at the hearing.
9 Q.276 Now, we saw a number of extracts and
10 documents that you were not able to review
11 or you didn't review prior to February
12 23rd, 2010. Had you reviewed all that
13 information, do you think it might have
14 been relevant to your conclusions on data
15 exchange?
16 R. Are you referring to those minutes that
17 you just talked about?
18 Q.277 Well, we saw a number of documents you and
19 I, I showed you documents, I referred to
20 extracts, transcripts. My question is
21 whether had you reviewed all this it would
22 have had an impact on your opinion that
23 you delivered this morning?
24 R. Well, no, I don't think so because when I
25 addressed the data exchange and the

1 coordination issue, I really relied on the
2 expert report of Mr. Hanser and I thought
3 I was careful enough to ask information
4 requests that eliminated the possibility
5 that there was a basis for limiting the
6 data exchange to those very few elements
7 that he identified.

8 In other words, in the IRs I was
9 looking for any kind of justification for
10 not expanding the data exchange to the
11 requirements of the Order 890. And when
12 I didn't find it in there, I felt that was
13 sufficient to base an opinion on because
14 I was talking directly to your expert.

15 Q.278 So, you assumed that Mr. Hanser had a
16 mandate to describe the data exchange that
17 took place between, you know, I wouldn't
18 say any period but before the ATC
19 coordination? It was your understanding
20 that Mr. Hanser had a mandate to describe
21 what in fact took place and what was
22 taking place and what the processes were
23 in place for data exchange, that was your
24 understanding of Mr. Hanser's report?

25 R. My understanding was, and I verified this

1 with information requests to Mr. Hanser,
2 was that he was presenting the complete
3 data exchange proposed in the OATT,
4 proposed by HQT.
5 Q.279 That was your understanding?
6 R. That's what he said.
7 Q.280 Was that confirmed?
8 R. I took it as sufficient.
9 Q.281 What did you take as sufficient?
10 R. His answers.
11 Q.282 But did you read his report and the
12 mandate that was described in his report?
13 R. Oh, yes, sure, I read his report, asked
14 him IRs to follow up and asked him
15 basically: « Is this the complete data
16 exchange that is being proposed? » And he
17 basically said yes.
18 Q.283 So, that is a basis for your entire
19 conclusion, is that right?
20 R. It's rooted in that, yes.
21 Q.284 It is rooted in that?
22 R. I didn't feel like I needed to gather
23 evidence after filing my report.
24 Q.285 But, you know, we heard Mr. Clermont
25 testify on numerous occasions, examination

1 in chief and cross-examinations, on what
2 actually took place in terms of data
3 exchange. Don't you think any of that
4 evidence is relevant on data exchange?
5 R. Well, hearing it, it sounded good but
6 really just hearing it didn't sound like
7 there was a lot of description about what
8 actually happened. There was some
9 description about having a really good
10 process and really useful exchange but
11 there really wasn't any discussion about
12 the specific data that was supposed to be
13 exchanged and how that was to be used.
14 Q.286 Mr. Sinclair, you just testified that you
15 actually didn't hear any of it, you didn't
16 see it.
17 R. Oh no, you read it back to me here.
18 Q.287 Yes. Yes, I just read that to you. But
19 I'm looking at your report and at your
20 testimony, right? You said this morning
21 something, and it's in your presentation,
22 in June 2009 you said something, in
23 September 2010 you said something as well.
24 And it was with me this morning that for
25 the first time you read these transcripts.

1 And now you're telling us that none of
2 this is relevant but you just discovered
3 that this morning. How can you say today
4 that this was irrelevant prior to even
5 reading it?

6 R. Oh, I'm not saying it was... that I judged
7 it irrelevant at the time. But as you
8 asked me that question repeatedly, whether
9 it's relevant, I had to say it doesn't
10 sound very relevant.

11 Q.288 But at the time of your report, you were
12 not in possession of that information,
13 right?

14 R. That's correct.

15 Q.289 So, when you wrote your report, you didn't
16 know if it was relevant or not, right?
17 You didn't see it so how can you know if
18 it was relevant or not?

19 R. It's not possible, right. It's not
20 possible.

21 Q.290 What is not possible?

22 R. To know if it's relevant if I never heard
23 it.

24 Q.291 All right. So, you decided a moment ago
25 that, when I introduced to you all that

1 evidence dealing with data exchange, you
2 just decided that it was irrelevant?

3 R. No, you asked me if it was relevant.

4 Q.292 Yes.

5 R. And I say based on what I heard you say,
6 the translation, or you read it in French
7 and I heard it translated, it does not
8 enlighten me any further about whether it
9 gets closer to 890.

10 Q.293 And this, what's contained in this, do you
11 think it's relevant or not relevant? You
12 know, there's...

13 R. I couldn't tell you.

14 Me ANDRÉ TURMEL :

15 Objection. Comment peut-on montrer au témoin un
16 document en rouge, qui sont les *transcripts* d'une
17 audience à laquelle le témoin n'a pas participé,
18 et...

19 Me ÉRIC DUNBERRY :

20 Monsieur le Président...

21 Me ANDRÉ TURMEL :

22 ... on lui montre et on lui dit: « Pensez-vous que
23 ceci est pertinent? »

24 Me ÉRIC DUNBERRY :

25 Monsieur le Président, mon client me suggère de

1 retirer ma question, le point a été fait je pense,
2 je vais retirer ma question.

3 LE PRÉSIDENT :

4 Très bien. Alors, nous en sommes à 15 h 00.

5 Me ÉRIC DUNBERRY :

6 Nous pouvons prendre la pause maintenant, Monsieur
7 le Président.

8 LE PRÉSIDENT :

9 C'est tout le temps que nous avons pour aujourd'hui.
10 Donc, nous allons ajourner et reprendre les travaux
11 à 9 h 00 demain.

12 Me ÉRIC DUNBERRY :

13 Merci, à demain.

14 AJOURNEMENT AU 3 MAI 2011 À 9H00.

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1 Je, soussignée, DENISE TURCOT, sténographe
2 officielle bilingue, certifie sous mon serment
3 d'office que les pages qui précèdent sont et
4 contiennent la transcription fidèle et exacte de mes
5 notes, le tout conformément à la loi.

6
7 Et j'ai signé,

8
9
10 _____
11 DENISE TURCOT

12 Sténographe officielle bilingue
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