

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 4 MAI 2011

VOLUME 25

DENISE TURCOT
sténographe officielle

R-3669-2008
4 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
québécoise de lutte contre la pollution
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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LISTE DES ENGAGEMENTS

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#2 (RÉVISÉ) :

Provide a list of all documents
provided to Dr. Sinclair by NLH
on which he relied to draft
Section 2, pages 7 to 12 and 34
to 40; and section 3, pages 12
to 23 and 40 to 42. 208

#6 (RÉVISÉ) :

Verify and confirm whether Dr.
Sinclair attended at the
hearings of October 18, 19, 20,
21 and 22, 2010. Verify and
confirm whether Dr. Sinclair
attended at the hearings of
October 18 and 19, 2010. 210

1 EN L'AN DEUX MILLE ONZE (2011), ce quatrième (4e)
2 jour du mois de mai,

3
4 LA GREFFIÈRE :

5 Prenez place, s'il vous plaît.

6 LE PRÉSIDENT :

7 Bonjour à toutes et à tous. Reprise de l'audience.
8 Madame Guilhermond.

9 LA GREFFIÈRE :

10 Protocole d'ouverture. Audience du 4 mai 2011,
11 dossier R-3669-2008 - Phase 2. Demande relative à
12 la modification des Tarifs et conditions des
13 services de transport d'Hydro-Québec à compter du
14 1er janvier 2009. Poursuite de l'audience.

15 Me ÉRIC DUNBERRY :

16 Monsieur le Président, bonjour.

17 LE PRÉSIDENT :

18 Bonjour.

19 Me ÉRIC DUNBERRY :

20 Madame, Monsieur les régisseurs, bonjour. Alors,
21 l'horaire de la journée, si vous me permettez peut-
22 être de l'annoncer tout de suite, nous allons
23 poursuivre le contre-interrogatoire de monsieur
24 Sinclair qui devrait se terminer, quant à moi, dans
25 une heure, une heure et demie environ.

1 Et nous aurons alors une option, soit
2 d'interrompre le contre-interrogatoire de monsieur
3 Sinclair et d'interroger monsieur Bennett qui, on
4 l'a compris, n'est pas disponible demain, avec
5 espoir de débiter et de terminer son contre-
6 interrogatoire aujourd'hui de façon à ce qu'il
7 puisse être libéré parce qu'il n'est pas disponible
8 demain, et reprendre par la suite avec monsieur
9 Sinclair et ce sera ma consœur, maître Hivon, qui
10 fera un bout de chemin sur la planification ouverte
11 et, au besoin, terminer demain.

12 Nous sommes disponibles, avec monsieur
13 Sinclair et nous avons compris que monsieur Sinclair
14 et les procureurs de NLH sont également disponibles
15 demain au besoin pour terminer l'interrogatoire de
16 monsieur Sinclair, ce qui permettrait de libérer
17 monsieur Bennett et libérer également le panel au
18 complet demain au plus tard.

19 LE PRÉSIDENT :

20 Donc, la Régie accepte cette proposition pour
21 finaliser cette partie de l'audience et, à ce
22 moment-là, nous allons planifier terminer à 15 h
23 aujourd'hui et pour finaliser demain avec le panel.

24 Et aussi, la Régie apprécierait... hier,
25 il y a eu des engagements de pris du Producteur pour

1 produire, pour finaliser la documentation sur le
2 débat sur l'engagement 16. Ça fait que la Régie
3 apprécierait que ce soit répondu dans les meilleurs
4 délais pour qu'elle puisse avoir toute l'information
5 pour rendre sa décision.

6 Me ÉRIC DUNBERRY :

7 Oui, nous ferons le message aux personnes
8 concernées, Monsieur le Président, sans faute à la
9 pause.

10 Alors, avec votre permission, nous
11 pourrions reprendre.

12 LE PRÉSIDENT :

13 Oui.

14 PANEL NLH

15 GILBERT BENNETT

16 ROBERT SINCLAIR

17 INTERROGÉS PAR Me ÉRIC DUNBERRY :

18 Q.1 Mr. Sinclair, good morning.

19 R. Good morning.

20 Q.2 Our last topic for the day, you and I,
21 will be designated resources. So again I
22 would like to ask you to take a copy of
23 your report as well as a copy of your
24 PowerPoint presentation that you had
25 yesterday. And I would invite you to join

1 me on page 9 of your report, line 10.

2 Our first topic will be the
3 inscriptions QCRD and QCRND that you
4 discussed in your report.

5 So, on page 9, line 10, you say the
6 following, and I quote you:

7 « While setting aside
8 ATC for native-load
9 service is consistent
10 with the pro forma 890
11 OATT, the idea
12 embodied in the term
13 QCRND firm appears to
14 create firm rights
15 from non-designated
16 resources, which is
17 not consistent with
18 the pro forma 890
19 OATT. »

20 I assume that this reflects your position
21 on the matter as we speak?

22 R. Yes.

23 Q.3 Okay. So, just to make sure we deal with
24 a few basic common issues here, I read
25 that insofar as the QCRD inscription is

1 concerned which is serving the native load
2 from designated resources, you do not have
3 any issue with that inscription that it
4 does reflect... actually you use the word
5 « consistent », so that inscription
6 insofar refers to the service of the
7 native load from designated resources is
8 an inscription reflecting an approach
9 consistent with FERC OATT. Is that
10 correct?

11 R. That's correct.

12 Q.4 Now, will come to the firm, non-firm,
13 don't worry about that but I would simply
14 ask you to leave these terms aside for a
15 moment, leaving aside the term « firm »
16 and « non-firm » and just looking at the
17 inscription « QCRND » which means
18 servicing the native load from non-
19 designated resources. You understand that
20 this is what is meant by this acronym?

21 R. Yes.

22 Q.5 Okay. Now, if I refer you to line 19,
23 line 20 actually of your report, you state
24 the following:

25 « Section 13.3 of the

1 *revised HQT OATT*
2 *allows native load to*
3 *be served from non-*
4 *designated resources*
5 *on a non-firm basis*
6 *using "secondary*
7 *service". »*

8 So, again, can you and I agree, leaving
9 aside the notion of firm and non-firm,
10 that the inscription itself, just the
11 inscription QCRND which you referred to as
12 being secondary service, is in itself,
13 again leaving aside firm and non-firm
14 qualifications, but that the QCRD
15 inscription referring to the service of
16 the native load from non-designated
17 resources is not inconsistent, in fact, is
18 consistent with secondary service and
19 therefore with FERC *pro forma* OATT. Would
20 you agree with that?

21 R. Yes, there can be designations, there can
22 be set-asides for capacity for non-
23 designated resources.

24 Q.6 Okay. And you call this, and we do as
25 well, call it secondary service and we

1 refer to Section 36 of our OATT which is
2 the same basic concept that you have in
3 FERC's OATT. Is that correct?

4 R. That's correct, 36.3.

5 Q.7 All right. I assume that you have
6 reviewed our Section 36.3 of our OATT and
7 that you find it consistent with FERC's
8 equivalent section dealing with secondary
9 service. Is that correct?

10 R. I can't recall if I addressed every issue
11 in this section but I know this particular
12 issue is not consistent.

13 Q.8 Maybe I can show you our Section 36.3.
14 Could you take a copy of Section 36.3
15 which would be... well, you can find
16 copies of that in various places, but
17 certainly HQT-4, document 1, is the
18 English version of our proposed OATT and
19 Section 36.3 is in that section.

20 Me ANDRÉ TURMEL :

21 Un instant.

22 Q.9 Just to make sure, you've got it on your
23 screen, Dr. Sinclair?

24 R. Yes, I have it on my screen.

25 Q.10 Okay.

1 Me ÉRIC DUNBERRY :

2 Q.11 So...

3 R. Just give me a minute to find it.

4 Q.12 Yes, I will.

5 R. Okay.

6 Q.13 Okay. So, you see we have a Section 36.3
7 and it's entitled *Secondary Service* and it
8 reads as follows:

9 « *The Distributor may*
10 *use the transmission*
11 *provider's*
12 *transmission system to*
13 *deliver energy to its*
14 *loads from resources*
15 *that have not been*
16 *designated as*
17 *Distributor resources.*
18 *Such energy shall be*
19 *transmitted on an as-*
20 *available basis at no*
21 *additional charge.*
22 *All other requirements*
23 *of Part IV of the*
24 *Tariff except for*
25 *transmission rates*

1 *shall apply to*
2 *secondary service.*
3 *Deliveries from*
4 *resources other than*
5 *designated resources*
6 *shall have a higher*
7 *priority than any non-*
8 *firm point-to-point*
9 *transmission service*
10 *under Part II*
11 *herein. »*

12 Would you agree that this Section 36.6
13 referring to secondary service is
14 consistent with FERC equivalent section?

15 R. I believe so. The insertion there,
16 starting with «*All other requirements* »,
17 I'm not sure but I think for the purposes
18 of our discussion, I think you are more
19 concerned about the priority of service.
20 So, I think that doesn't apply to priority
21 service. Otherwise, I think it's
22 consistent, yes.

23 Q.14 Okay. Now, going back to page 9, lines 10
24 to 13, so you and I have discussed the
25 things we agree on. Now, let's move to

1 discuss things that perhaps we do not
2 agree on, on page 9, from lines 10 to 13,
3 you say the following and we just read
4 that actually. The second part of that
5 line says:

6 « The QCRND firm
7 appears to create firm
8 rights from non-
9 designated resources
10 which is not
11 consistent. »

12 So, your point of contention, at least in
13 that section, refers to the fact that the
14 QCRND firm inscription would create firm
15 rights from non-designated resources to
16 serve the native load and you find that,
17 the firmness of these transmission rights,
18 you find that inconsistent with FERC *pro*
19 *forma* OATT.

20 R. Yes.

21 Q.15 That is your point?

22 R. Yes.

23 Q.16 Okay. So, your point basically is that
24 firm imports to serve the native loads
25 have to be arranged under Part II of the

1 Tariff which is point-to-point service in
2 order to be firm?

3 R. My point is that, in that particular
4 quoted passage, my point is that when the
5 QCRND firm is used, it uses up firm ATC.

6 Q.17 Yes.

7 R. So, it creates firm reservation for that
8 service.

9 Q.18 Okay. So, are you saying that this is not
10 allowed under Part IV and consequently
11 these kinds of imports because we are
12 referring to imports...

13 R. Yes.

14 Q.19 ... to serve the native load should be
15 made according to Part II which is a
16 point-to-point firm transmission service
17 arrangement. Is that what you're saying?

18 R. If you want firm network service, you've
19 got a designated resource.

20 Q.20 Okay. And if it's not designated?

21 R. Then, you've got...

22 Q.21 Let's keep the hypothesis that you and I
23 are using, we are in the QCRND
24 environment.

25 R. Yes, we are.

1 Q.22 QCRND environment. And your point of
2 contention is that QCRND firm violates
3 FERC's *pro forma*. So, maybe I should ask
4 you a different question: if you look at
5 page 10, maybe there is the answer on line
6 14, you say, page 10, line 14, you say:
7 « *Point-to-point*
8 *service and native-*
9 *load service must be*
10 *kept mutually*
11 *exclusive.* »
12 You maintain that statement, I assume?
13 R. Yes.
14 Q.23 So, point-to-point service, Part II, has
15 not been designed or adopted for purposes
16 of serving the native load in Québec? You
17 know that for purposes of serving the
18 native load, rights and obligations are
19 created in Part IV of that Tariff,
20 specifically adopted by the Régie for the
21 native load. You agree? You agree, Mr.
22 Sinclair?
23 R. Yes.
24 Q.24 Okay. Now, I'd like to refer you to our
25 Schedule C-1, the proposed Schedule C-1

1 which is not far in HQT-4, document 1. If
2 you go to sheet 200 of our proposed OATT,
3 you will find a definition. It's the
4 definition of QCRND firm.

5 So, let me know when you have that.

6 R. I have it.

7 Q.25 Okay. So, let's read that together:

8 « *QCRND firm refers to*
9 *Québec Ressource non*
10 *désignée, capacity of*
11 *a resource posted on*
12 *OASIS but not*
13 *designated by the*
14 *Distributor for*
15 *supplying Québec*
16 *native load.* »

17 That is a proposed definition. You
18 recognize that point?

19 R. Yes.

20 Q.26 Okay. Now, just to make sure we
21 understand, if we remove the word « firm »
22 just a second and we replace that word by,
23 let's say, « Distributor », so it would be
24 QCRND (Distributor) and it reads:

25 « *Capacity of a*

1 *resource posted on*
2 *OASIS but not*
3 *designated by the*
4 *Distributor for*
5 *supplying the Québec*
6 *native load. »*

7 I guess the problem disappears. If the
8 word « firm » is removed, and we simply
9 put in brackets, this says « secondary
10 service, the Distributor serves the native
11 load from a non-designated resource »,
12 there wouldn't be any issue. It's the
13 word « firm » that creates the problem.
14 You recognize that the Distributor can
15 make arrangements to serve the native load
16 from non-designated resources. We saw
17 that?

18 R. Yes, I see what you're saying. But if you
19 go to sheet 199, about three quarters of
20 the way down, you'll see and I had this on
21 my presentation the other day, that there
22 is an equation ATC firm.

23 Q.27 Yes.

24 9H16

25 R. And you'll see, this is the real-time

1 horizon but it's true on the other
2 horizons too, you want to include in ETC
3 firm, the QCRND firm. You see that it's
4 ETC firm is equal to QCRD, which I
5 explained the other day was legitimate,
6 plus QCRND firm. Then the other ones, the
7 other terms aren't as important.

8 And then, if you go up the page,
9 you'll see that the ATC firm is equal to
10 TTC minus ETC firm. So, what these
11 equations do is allow the QCRND firm to
12 reduce the level of the ATC firm.

13 So, you're allowing the non-
14 designated resources to bump or to
15 displace capacity that would be available
16 to firm uses of the system.

17 And that's what I mean in my
18 discussion, in my testimony, that the
19 designation is operating to provide firm
20 reservation for non-designated resources.

21 Q.28 I understand exactly what you meant, I
22 appreciate that.

23 May I ask you now to take a copy of
24 a transcript, volume 7, hearing of October
25 27, 2010, volume 7. We will show you a

1 portion of that examination. Pages 95 and
2 96. It was the examination of monsieur
3 Sylvain Clermont on the notion of
4 secondary service conducted by your
5 counsel, maître André Turmel.

6 So, it's in French, we'll read it
7 together, slowly, so you can get a
8 translation at the same time. It is truly
9 question 124 on page 95. And it was a
10 discussion about what you just referred
11 to. All right, so the question 124, line
12 11 is as follows:

13 « *D'accord. O.K.*

14 *Alors, donc, l'OATT*
15 *applicable*
16 *actuellement au Québec*
17 *que vous connaissez,*
18 *vous nous l'avez dit*
19 *plusieurs fois, permet*
20 *d'approvisionner la*
21 *charge locale à partir*
22 *d'un service ferme*
23 *charge locale QCRD.*

24 *Si HQT souhaite*
25 *accorder un service*

1 *ferme à partir d'une*
2 *ressource non*
3 *désignée, l'OATT*
4 *actuel permet au*
5 *Distributeur de*
6 *désigner une ressource*
7 *pour servir la charge*
8 *locale de ce qui est*
9 *ferme. Ma question*
10 *c'est pourquoi le*
11 *Distributeur*
12 *utiliserait le service*
13 *QCRND ferme alors*
14 *qu'il peut désigner*
15 *une ressource et*
16 *utiliser le QCRD? »*

17 And then you have Mr. Clermont's response:

18 « *L'utilisation*
19 *typique de*
20 *l'alimentation de*
21 *charge locale à partir*
22 *de ressources non*
23 *désignée, c'est pour*
24 *des courtes*
25 *périodes... pour des*

1 *courtes périodes et*
2 *des choses qui ne*
3 *pouvaient pas être*
4 *planifiées à l'avance.*
5 *Donc, typiquement, là,*
6 *et c'est l'usage qu'on*
7 *voit, là, on va voir*
8 *ça beaucoup en période*
9 *de pointe. Le*
10 *Distributeur va*
11 *ajouter à*
12 *l'alimentation de sa*
13 *charge locale à partir*
14 *de ressources*
15 *désignées.*
16 *C'est l'usage typique*
17 *et c'est donc pas dans*
18 *l'horizon planifié.*
19 *On est plus dans un*
20 *horizon court terme de*
21 *façon temporaire. »*

22 So, that was monsieur Clermont's response
23 to maître Turmel with respect to the use
24 of this QCRND by the Distributor.

25 Would you have any reason to believe

1 that from an operational standpoint this
2 position, this statement made by Mr.
3 Clermont would be inaccurate,
4 unreasonable?
5 R. There wasn't anything in there that seemed
6 unreasonable.
7 Q.29 Are you familiar, Mister... because we've
8 talked about firm and non-firm, I would
9 like to change terminology and talk about
10 priority levels. Are you familiar with
11 the priority levels that have been
12 established by the Régie and those
13 proposed by TransÉnergie for the service
14 of the native loads? I'm not referring to
15 firm, non-firm; I'm referring to the
16 priority levels that are established for
17 purposes of classifying transmission
18 rights or from an operational standpoint
19 recognizing transmission rights for the
20 native loads.
21 R. So, do you mean the priority with respect
22 to reservations or with respect to
23 curtailments?
24 Q.30 Exactly. Well both.
25 R. Both?

1 Q.31 Yes.

2 R. Yes, I do understand this.

3 Q.32 I would like to refer you to one of our
4 exhibits, it's document HQT-8, document 1,
5 it's a table that was used quite a lot by
6 maître Turmel at one point during an
7 examination. So, I apologize again, we
8 only have a French version but I think you
9 won't have difficulties picking up the
10 information on the table.

11 R. Can you give me the cite again?

12 Q.33 It's HQT-8, document 1, page 17 of 20.
13 It's table 15.1. So, this is part of our
14 proposal. And what you have here is...
15 the title in French is « *Priorité*
16 *d'utilisation des interconnexions* ». So,
17 priority with respect to use of
18 interconnections.

19 And on the left column you have
20 exports, and we're not considering exports
21 for native loads so let's only look at the
22 imports, because the native load, by
23 definition, is importing energy for the
24 native loads.

25 And you have six boxes on the right

1 side. The first box refers to native load
2 service from designated resource and long-
3 term firm point-to-point transmission
4 service, one year and above. And that
5 has, let's call it, a priority 1. The
6 second box is firm point-to-point but it's
7 short-term and it has a priority 2.

8 Now, we'll stop at 3 because this is
9 where we are. QCRND from the Distributor.
10 This is what you and I have been
11 discussing for a moment now. This is
12 service of the native load from a non-
13 designated resource and this priority, and
14 this is said here in French, *cette*
15 *priority*, this priority can only be
16 exercised by the Distributor.

17 Now, you and I have been discussing
18 this QCRND firm for a moment. Now, my
19 question is as follows. Let's remove the
20 word « firm » and say it's not a QCRND
21 firm or non-firm because this truly is not
22 a discussion for Part IV, Part IV deals
23 with priority. And what I'm suggesting to
24 you is that secondary service to serve
25 native load exercised by the distributor

1 has a priority level of 3. My question to
2 you is do you find this reasonable, do you
3 find it reasonable that secondary service
4 to serve native load exercised by the
5 Distributor would actually come with a
6 priority level number 3 which is after
7 native load from designated resources,
8 after firm point-to-point short-term, but
9 before, and there you see level 4, before
10 non-firm point-to-point short-term, number
11 5, what we call the re-direct, and number
12 6, which is a different secondary service.
13 Do you find this reasonable?

14 And again, don't tell me if it's firm
15 or non-firm, we're changing terminology.
16 I'm asking you is a level 3 reasonable?

17 R. Well, I think there's some confusion.
18 This table here does set out the proper
19 priorities and has implications or implies
20 that there's these priorities for
21 reserving the transmission capacity. And
22 what I see here is correct, in accordance
23 with Order 890.

24 Q.34 So, you agree with that level 3?

25 R. Yes but there's confusion because when the

1 Attachment C-1 is applied to these
2 designations, there's a mistake in that
3 the firm ATC reflects reservations made by
4 non-designated resources and that's not
5 proper, because the non-designated
6 resources should only use up non-firm ATC,
7 as I pointed out before.

8 Attachment C-1 still has in it the
9 provision that some designations, some
10 reservations from non-designated resources
11 uses up the firm capacity.

12 And Mr. Clermont also stated during
13 the hearing that this should be treated as
14 non-firm. And I do agree that non-
15 designated resources should be treated as
16 non-firm. But then I think the Attachment
17 C-1 needs to be made consistent with that
18 remark and consistent with this table that
19 you're showing me.

20 Q.35 Could you take section 36 again, 36.3.
21 Keep the table, let's move to section 36.3
22 just to continue our discussion based on
23 your answer. So, if we move back to
24 36.3... so, 36.3 is secondary service,
25 okay, and you just said that this has to

1 be treated as non-firm?

2 R. It has to take up non-firm capacity.

3 Q.36 Now, I'm suggesting to you that when you
4 look at section 36.3 there's no reference
5 to firm or non-firm. What it says at the
6 end of section 36.3 is the following:

7 « Deliveries from
8 resources other than
9 designated resources
10 shall have... »

11 And I read this with you:

12 « ... shall have a
13 higher priority than
14 non-firm. »

15 So, again, the word that's used is
16 priority. And what it says in 36.3 is
17 that the priority is a higher priority
18 than non-firm, okay?

19 So, that's why, if you look again at
20 the table, number 4, class 4, is short-
21 term non-firm, as well as classes 5 and 6.
22 So, what we have is our priority 3 is a
23 higher priority than the non-firm but a
24 lower priority than other types of firm,
25 like 1 and 2. And 36.3 says: « Do what

1 you want, call it the way you want, but
2 the priority of that secondary service is
3 higher than non-firm. »

4 Do you agree with the wording of 36.3
5 saying that the priority level is higher
6 than non-firm?

7 R. Yes. 36.3 seems right, the table seems
8 right, what Mr. Clermont said seems right.
9 It's only in the construction of the
10 existing transmission commitments in
11 Attachment C-1 that is wrong.

12 Q.37 So, what you're saying is basically you're
13 in agreement with everything else except
14 that in the equation you would like to
15 remove that reference?

16 R. Yes, it should be moved to the non-firm
17 equation, ATC non-firm.

18 Q.38 Even if the priority is higher than non-
19 firm?

20 R. Well, it would have a higher reservation
21 priority but it would use up non-firm
22 capacity.

23 Q.39 I see what you're saying. Now, were you
24 aware of the fact that what is in this
25 table is nothing new, and in fact, this

1 table, or at least the first four levels,
2 it was all approved by the Régie sometime
3 ago. Are you aware of that fact?

4 Me ANDRÉ TURMEL :

5 Je vais m'objecter à cette question. Je pense que
6 mon confrère savait très bien que je me lèverais.
7 Je vous réfère à l'engagement - je vais vous
8 l'expliquer là - l'engagement 6 lors du contre-
9 interrogatoire de monsieur Clermont. Monsieur
10 Clermont s'autorisait, en présentant ce tableau dont
11 fait l'objet ici de la discussion, on l'avait
12 interrogé à l'effet de savoir est-ce que la Régie
13 avait autorisé une telle... toutes ces priorités,
14 notamment l'ensemble du tableau qui apparaît à la
15 pièce dont on discute. Et il n'a pas été capable,
16 lors de l'interrogatoire que l'on a fait avec lui,
17 de nous indiquer exactement quel était le passage où
18 la Régie avait autorisé, comme mon confrère le
19 laisse entendre ou essaie d'amener le témoin, où la
20 Régie avait autorisé une telle priorité. Or, on
21 parlait bien de la décision D-2006-066. A
22 l'engagement 6, si vous le prenez, qui a été répondu
23 le 11 novembre 2006, on avait demandé:

24 « Indiquer les
25 passages de la

1 *décision D-2006-*
2 *066... »*

3 Que mon collègue n'a pas encore nommée mais qu'il
4 s'apprêtait à nommer.

5 *« ... pertinents à*
6 *l'alimentation de la*
7 *charge locale avec une*
8 *ressource non désignée*
9 *et le fait que la*
10 *priorité ne peut être*
11 *exercée par le*
12 *Producteur. »*

13 Et là il y a une explication. Ce que je veux vous
14 dire, ce que je veux indiquer ici c'est que nulle
15 part, quand on lit la réponse en engagement du
16 témoin Clermont, il n'est clairement indiqué que le
17 tableau dont il est fait l'objet de la discussion
18 ici est clairement adopté tel que l'on discute
19 aujourd'hui.

20 9H31

21 Et bref, ce que je vous dis c'est que
22 c'est un point de droit qu'on pourra plaider mais je
23 ne pense pas à ce stade-ci que mon confrère peut
24 laisser entendre à un témoin qu'une décision a
25 approuvé un tel tableau alors que nous avons une

1 prétention contraire, à tout le moins, et que cette
2 question fera certainement l'objet de
3 représentations en plaidoirie.

4 Me ÉRIC DUNBERRY :

5 Monsieur le Président, je peux retirer la question
6 et la reposer dans deux questions puis vous pourrez,
7 je pense, à ce moment-là, juger de la pertinence de
8 la question. Mais préalablement à poser la
9 question, effectivement, j'allais présenter au
10 témoin une copie de la décision D-2006-66 alors je
11 peux bien retirer la question et y arriver peut-être
12 dans deux questions ce qui permettra peut-être de
13 juger plus en contexte de la question.

14 LE PRÉSIDENT :

15 Très bien.

16 Me ÉRIC DUNBERRY :

17 Q.40 Mr. Sinclair, I would like you to take a
18 copy of a decision that I have for you.
19 It's decision D-2006-66. We only have the
20 table but I'm not going to have a
21 discussion beyond that table and I don't
22 think maître Turmel would object to that.
23 It's just the table that we find on page
24 46.

25 LE PRÉSIDENT :

1 Le numéro de la décision encore?

2 Me ÉRIC DUNBERRY :

3 C'est la D-2006-66, Monsieur le Président, d'avril
4 2006. Et je vais référer le témoin uniquement, et
5 j'ai le tableau ici. Si vous ne l'avez pas,
6 Monsieur le Président, j'ai des copies du tableau.

7 Q.41 So, Mr. Sinclair, this is a decision of
8 this Régie that was rendered in 2006 and
9 it presents a table, Table 4 on page 46
10 that you have now, and again it's in
11 French and as I said earlier, the first
12 four lines or boxes are those of interest.

13 Now, to answer the question of maître
14 Turmel and perhaps give you more guidance,
15 I am considering the third box. The third
16 box deals with the Distributor. The
17 undertaking to which maître Turmel was
18 referring was, with respect to the
19 Producer, HQT Production, whether HQT
20 Production was granted what we see in our
21 Table 15.1 a priority level number 6 which
22 is no priority, that's the bottom of the
23 line. But I'm not referring right now,
24 because we will come to that point
25 eventually but I'm still in this box

1 number 3.

2 So, I'm only focusing on this third
3 box where it is the Distributor who is
4 exercising its right to serve the native
5 load from non-designated resources. And
6 maître Turmel and I may have a discussion
7 about whether that decision deals with the
8 Producer as well. But I'm not having that
9 discussion now. I'm only looking at the
10 Distributor.

11 And what I'm suggesting to you is
12 that there is nothing new in our proposal
13 because back in 2006, if you look at the
14 third line, in that decision, the Régie
15 confirmed that for the supply of the
16 native load from non-designated resources,
17 when that right is exercised by the
18 Distributor and you see this in French
19 it's underlined, the word « Distributor »
20 is there underlined, it's a category 3 or
21 a class 3 or a priority level number 3 but
22 again it's the same ranking. It comes
23 after the firm long term point-to-point
24 and the native load served by designated
25 resources and after the short term firm

1 point-to-point but before the short term
2 non-firm point-to-point. You see the same
3 ranking there?

4 R. Yes. Could you do me the favour of just
5 reading the French part that's underlined
6 in box 3 so I could have the translation.

7 Q.42 Yes, I will do that with pleasure. It
8 says, the box 3 says:

9 « Service pour
10 l'alimentation de la
11 charge locale avec une
12 ressource non
13 désignée. Cette
14 priorité ne peut être
15 exercée que par le
16 Distributeur. »

17 And if you look at our Table 15.1 which is
18 what we propose, I will read it to you
19 again:

20 « Service pour
21 l'alimentation de la
22 charge locale avec une
23 ressource non
24 désignée, cette
25 priorité ne peut être

1 *exercée que par le*
2 *Distributeur. »*

3 I think it's exactly the same wording
4 actually.

5 So are you and I in agreement that,
6 insofar as the Distributor is concerned,
7 back in 2006 and today in 2011, it's the
8 same concept. We're suggesting and asking
9 this Régie to recognize that secondary
10 service to serve the native load from non-
11 designated resource as a priority of 3
12 which is the last ranking firm type of
13 service with a priority level 3 which is
14 higher than the non-firm, it's right there
15 in the middle of 1, 2 and then 4, 5, 6.
16 Can you and I agree on that?

17 R. I don't agree that it's firm but it's
18 between. I mean, I agree with this table
19 as it is stated and I agree that it is the
20 same as the one at 15.1.

21 Q.43 Okay. And you and I, I think, agree that
22 this priority of 3 is reasonable, makes
23 sense and is compliant with 36.3?

24 R. Yes.

25 Q.44 Okay. Page 30, slightly moving ahead on

1 a slightly different topic, although
2 related. We'll come back to the QCRND in
3 a moment.

4 Page 30, lines 8 to 10.

5 R. You're referring to my testimony?

6 Q.45 No. Yes, yes, you're right, I do. So,
7 we're back to page 30, lines 8 to 10. The
8 issue is on designation or we call it
9 suppression. I don't know if that word
10 rings a better... let's call it
11 suppression, *suppression de ressources* or
12 undesignation of resources.

13 What you say here on page 30 is:

14 « *The impact on ATC*
15 *calculations from*
16 *undesignating network*
17 *resources should be*
18 *addressed in*
19 *Attachment C-1 of the*
20 *revised HQT OATT.*
21 *However, it is not*
22 *specified therein. »*

23 As a first question, when you say « *should*
24 *be addressed in Schedule 1 »* , are you
25 suggesting that there should be some

1 additional language, additional provisions
2 in Schedule C-1 to deal specifically with
3 suppression of resources or
4 undesignations?

5 R. Let me just read what I wrote here. Okay,
6 can you repeat your question?

7 Q.46 My question is when you suggest that it
8 should be addressed, these are your words,
9 are you suggesting to this Régie that we
10 should find some additional provisions,
11 additional language in Schedule C-1 to
12 specifically deal with suppression of
13 resources?

14 R. I think that it could be put in Attachment
15 C-1 or it could be put in some business
16 practices manual but I think the key point
17 is that when a designated resource is
18 undesignated for the purpose of making an
19 off-system sale, firm off-system sale,
20 this should be a process for undesignating
21 the QCRD.

22 And also, there should be a provision
23 either in C-1 or in a business practices
24 manual that would allow for the release of
25 capacity in the event that a network

1 resource is not scheduled.

2 Q.47 So, you're saying it could be in Schedule
3 C-1. It could be in business practice
4 manual. Could it be in the OATT itself?

5 R. I suppose it could.

6 Q.48 Yes. Now, looking at FERC *pro forma* OATT
7 and its equivalent schedule, did you find
8 any specific language in the equivalent
9 Schedule C?

10 R. I believe the *pro forma* C-1 does not
11 provide very much detail.

12 Q.49 Okay. So, FERC did not find it necessary,
13 we cannot speak on the behalf of FERC, but
14 it appears that for whatever reason, FERC
15 did not find it necessary or did not
16 direct transmission service providers to
17 include in their Schedule C-1, like our
18 Schedule C-1, any specific language to
19 deal with the issue of undesignation of
20 resources. There is no specific language
21 in FERC's OATT about this, in FERC's
22 schedule about this?

23 R. Yes, FERC just directed the utilities to
24 provide a very detailed guidance and
25 specifics on how ATC is calculated.

1 Q.50 Okay. So, if you take our own Schedule C-
2 1, TransÉnergie's Schedule C-1, I'd like
3 to refer you to some of our language
4 perhaps starting with sheet number 199.

5 LE PRÉSIDENT :

6 De quelle pièce?

7 Me ÉRIC DUNBERRY :

8 Schedule C-1, Monsieur le Président, c'est la pièce
9 HQT-4, document 1. Vous allez la retrouver là.

10 LE PRÉSIDENT :

11 O.K.

12 Me ÉRIC DUNBERRY :

13 C'est joint aux Tarifs. Vous allez la trouver
14 également avec les fiches techniques dans HQT-2.
15 J'utilise présentement HQT-4, document 1, la version
16 consolidée.

17 LE PRÉSIDENT :

18 O.K.

19 Me ÉRIC DUNBERRY :

20 Q.51 So, on page 199, Mr. Sinclair, there is
21 this basic equation that we find in your
22 presentation as well. I'll keep it
23 simple, ATC equals TTC minus ETC, right?
24 That is really the basic bottom line
25 formula? And ETC is for Existing

1 Transmission Commitments. Is that
2 correct?

3 R. Yes.

4 Q.52 Okay. Now, that word ETC is defined in
5 Section 3 b), page 205, 3 b)i). So, we
6 have ETC has... this expression is
7 defined, is:

8 « The total amount of
9 power that is already
10 reserved over a path
11 plus capacity required
12 for supplying native
13 load and posted on
14 OASIS. »

15 So, we agree that the native load is
16 included in the ETC?

17 R. Yes.

18 Q.53 Okay. So, if a Distributor resource is
19 suppressed and no longer serves, be it
20 temporarily or indefinitely, no longer
21 serves the native load, I guess that the
22 ETC would have to be recalculated to take
23 into account that suppression?

24 R. Yes, that's the important point, right.

25 Q.54 Yes. So, going back to the equation, what

1 we have in the Tariff already allows for
2 the ATC to go up when the ETC goes down.
3 You and I agree on that basic concept?

4 R. That's correct.

5 Q.55 Okay. So, when there is a suppression or
6 an undesignation, there is a basic
7 equation. There is a basic definition of
8 ETC. There is a direct reference to
9 native load. Is it not a fact that by the
10 simple application of this Schedule C-1,
11 your goal is achieved? In other words,
12 when there is an undesignation or a
13 suppression, this works out exactly like
14 you want it to work out. The ATC goes up
15 and the ETC goes down. The equation
16 applies. Is that correct?

17 R. Well, that's logical. This equation which
18 I've seen in other tariffs would be
19 applicable in the typical arrangements
20 that you find in a vertically integrated
21 utility, like HQT.

22 The problem is, and I've explained
23 this on page 30, is that there is this
24 heritage pool that comes in between the
25 Distributor and the Producer. So, the

1 Distributor has to provide this
2 information to the transmission Provider
3 because the transmission Provider
4 calculates these ATC values. The
5 transmission provider has to understand
6 each one of these, has to have values for
7 each one of these designations as you
8 point out...

9 9h47

10 Q.56 And that's why the...

11 R. ... in order for the ATC...

12 Q.57 Yes.

13 R. ... to be calculated properly.

14 Q.58 But that's why there is, I will come back
15 to this, there is this attestation, this
16 statement, this *attestation* in French,
17 that comes into play eventually, that the
18 transmission service provider is told by
19 way of an attestation that there is a
20 suppression or there is a new designation.
21 That would work as well, I assume?

22 R. Basically, yes. You want somebody to
23 stand behind it.

24 Q.59 But just looking at Schedule C-1 right
25 now, with that basic equation, ATC equals

1 TTC minus ETC, when the ETC goes down, the
2 ATC goes up, we agree?

3 R. That's correct.

4 Q.60 Now, you know I assume that transmission
5 service providers, not just TransÉnergie,
6 but transmission service providers update
7 their ATC value on a continuous basis,
8 whenever there's a change in the
9 reservation status or other events which
10 justify adapting or adjusting the ATC.

11 This is done on a continuous basis, right?

12 R. Well, they should do that, right.

13 Q.61 Yes. So, whenever there is a non-
14 designation as one event, or other events,
15 which impacts on the ATC, it's part of
16 their daily continuous obligation to
17 update the ATC value and post updated ATC
18 values, that is correct?

19 R. That's correct.

20 Q.62 So, let me ask you a very open question.
21 Why do you find it necessary - and I
22 understand the attestation issue and it's
23 a bit of a separate issue for me but - why
24 do you find it necessary to change
25 Schedule C-1 while FERC has not directed

1 any transmission providers to specifically
2 address suppressions or undesignations in
3 the Schedule 1 when we have a basic
4 equation with a basic definition that just
5 does what you're suggesting, that is ATC
6 is adjusted on a continuous basis
7 depending on change of status or change of
8 reservations?

9 R. Well, I think you asked me to agree
10 whether the transmission provider should
11 be updating ATC on a continual basis and
12 I agreed with you. I didn't say that I
13 know whether or not HQT currently does
14 that or not.

15 Q.63 Are you assuming that we're not doing what
16 everybody else is doing, you're assuming
17 we're not updated our ATC values?

18 R. Oh no, I'm just saying... I don't know for
19 sure but this obviously is for a Tariff
20 that's not in effect yet, so I don't know
21 how you would operate, that's why we have
22 these equations, to specify how you should
23 operate.

24 Q.64 You just said something which I would like
25 to come back. Is there any reason why you

1 would think that this TSP, this
2 transmission service provider would not do
3 like everybody else and update its ATC
4 values? Why are you assuming...

5 R. No...

6 Q.65 ... that we wouldn't do that?

7 R. No, I didn't say that.

8 Q.66 Okay. Let's come back to the QCRND non-
9 firm. We dealt with the QCRND firm, class
10 3. Let's come back to the QCRND non-firm,
11 page 9 of your report. Now, on page 9,
12 lines 21 and 22, this is what you say, and
13 I quote it. The first line we read
14 already.

15 « Section 36.3 of the
16 revised HQT OATT
17 allows native load to
18 be served from non-
19 designated resources
20 on a non-firm basis
21 using secondary
22 service. This is
23 represented in
24 Attachment C-1 by
25 QCRND non-firm and is

1 *consistent with the*
2 *pro forma 890 OATT. »*

3 So, I guess you and I, as a starting
4 point, agree that the QCRND non-firm
5 inscription is consistent with FERC?
6 That's what you wrote?

7 R. The non-designated resources should be...
8 non-designated resources serving native
9 load should be using non-firm service.

10 Q.67 So, we agree that QCRND non-firm is
11 consistent with FERC?

12 R. No, I think I point out later, and I
13 certainly point out in my presentation,
14 that the problem with that is there's a
15 permission for the producer to use that...
16 it invites the producer to use Part IV,
17 which is not acceptable from my point of
18 view.

19 Q.68 Where is that, do you... well, let me...
20 I thought you and I... I'm just reading
21 your report, page 9, maybe I'm missing
22 something here. Page 9 of your report...
23 and again, this is the report that you
24 said was accurate yesterday. Now, it is
25 said:

1 « This represented in
2 Attachment C-1 by
3 QCRND non-firm and is
4 consistent... »

5 « Is », « is », it's not « is not », it
6 is, is consistent.

7 « ... with pro forma
8 OATT. »

9 Are you changing your report on me now?
10 Are you now saying that this is not
11 consistent?

12 R. I suppose I should qualify that statement,
13 that if it was really treated as non-firm
14 from non-designated resources it would be
15 consistent. However, there is an
16 additional provision in the QCRND non-firm
17 which is objectionable, and that is that
18 it invites the use of Part IV by the
19 Producer.

20 Q.69 Well, I hear what you're saying, we'll get
21 there, but start with the basic. Do you
22 maintain this allegation here? I hope you
23 do because otherwise I may have to come
24 back to other point questions. It is
25 written here that it is consistent. So,

1 are you telling me today that it's not
2 consistent? Is it or is it not? That's
3 the simplest question you can ask...

4 R. Yes, I suppose... yes.

5 Q.70 ... is it or is it not consistent?

6 R. Let me clarify. And I admit that perhaps
7 what I wrote here is not completely what
8 I intended to write and that is that QCRND
9 non-firm, as a concept, is consistent, and
10 we talked about that very thoroughly. The
11 QCRND non-firm in Attachment C-1 does not
12 quite satisfy the secondary service
13 concept.

14 Q.71 And could you expand on this, why does it
15 not satisfy?

16 R. Oh yes, it's simple, and I explained in my
17 presentation that the QCRND non-firm is a
18 reservation... represents capacity set
19 aside for the Producer, HQP, to serve
20 native load from non-designated resources.
21 And that is inconsistent with your...
22 well, HQT's own OATT but also inconsistent
23 with the *pro forma* 890 OATT.

24 Q.72 Now, the QCRND non-firm is to serve the
25 native load, right?

- 1 R. Correct.
- 2 Q.73 The secondary service is to serve the
3 native load, is that correct?
- 4 R. That's correct.
- 5 Q.74 The QCRND non-firm is to serve the native
6 load from a non-designated resource, we
7 agree?
- 8 R. Identified by the Producer.
- 9 Q.75 And we're saying here that, in this line,
10 that it's non-firm.
- 11 R. Yes.
- 12 Q.76 The non-firm part of this equation is
13 agreeable to you?
- 14 R. Yes.
- 15 Q.77 Okay. Your point is that it is because it
16 is invoked by the Producer?
- 17 R. That's correct.
- 18 Q.78 Now, it is to serve the native load?
- 19 R. That's correct. It permits the Producer
20 to use up transmission that could be used
21 up by another supplier that would have the
22 opportunity to also supply native load.
23 It favours the Producer as a supplier of
24 economy energy for the native load.
- 25 Q.79 How many suppliers do you think can serve

1 the Québec native load?

2 R. Well...

3 Q.80 Who else would be favoured or not
4 favoured? I mean, the Québec native
5 load... first of all, who serves the
6 native load in Québec?

7 R. The heritage pool.

8 Q.81 No, I mean the...

9 R. HQP. Basically HQP.

10 Q.82 HQD. « D ». Distribution did you say?

11 R. Oh, who serves it?

12 Q.83 Who serves the native load in Québec?
13 There's an entity serving the native load
14 in Québec. Who serves the native load in
15 Québec?

16 R. Do you mean distributes to or...

17 Me ANDRÉ TURMEL :

18 Je vais faire une objection là-dessus parce que mon
19 confrère dit une entité. Peut-être être précis là,
20 une entité aux États-Unis c'est une société, une
21 compagnie. Est-ce que HQP est une compagnie
22 distincte? Juste peut-être être précis dans vos
23 mots, parce qu'une division ou... parce que...

24 Me ÉRIC DUNBERRY :

25 Bien, justement, je voulais éviter des débats

1 juridiques, Monsieur le Président.

2 Me ANDRÉ TURMEL :

3 Non, bien... bien, parce que voilà, c'est justement
4 là de quoi qu'on parle.

5 LE PRÉSIDENT :

6 Disons qu'ici la Régie permet la question. La
7 question est quels sont les fournisseurs du
8 distributeur de la charge locale, c'est le sens de
9 la question?

10 Me ÉRIC DUNBERRY :

11 Bien, en fait, la question, je la posais en anglais
12 puis je la traduirais en disant quelle entité
13 alimente la charge locale. Alors, je ne parle pas
14 de fournisseurs d'énergie, je parle de celui... the
15 load-serving entity I guess would be the proper
16 translation. Quelle entité alimente la charge
17 locale?

18 Me ANDRÉ TURMEL :

19 Mais il y a une confusion... O.K., si vous me
20 permettez. Il y a une confusion dans ce que nous
21 dit maître Dunberry là, il mélange deux choses là.
22 Il veut savoir qui distribue, j'imagine que sa
23 question, où il veut vous amener, c'est HQD. Qui
24 fournit HQD, ça peut être bien sûr le *heritage* ou le
25 *post-heritage* avec les différents contrats accordés

1 par HQD. Mais donc, mon confrère, je l'invite peut-
2 être à clarifier là sa question.

3 LE PRÉSIDENT :

4 Je pense qu'il faudrait préciser la question, sinon
5 on rentre dans des termes...

6 Me ÉRIC DUNBERRY :

7 Monsieur le Président, la réponse est dans la loi,
8 la réponse est dans le Tarif. Je pense que je peux
9 passer à une autre question plutôt que de faire un
10 débat juridique sur ces définitions-là.

11 LE PRÉSIDENT :

12 Très bien.

13 Me ÉRIC DUNBERRY :

14 La réponse, je pense que tout le monde la connaît la
15 réponse et elle est dans la loi, elle est dans le
16 Tarif, effectivement.

17 Q.84 Well, perhaps I can ask the question, my
18 colleague is suggesting a question,
19 rephrasing it differently to avoid a legal
20 debate here.

21 Do you know what is the identity, the
22 entity, in Québec that has the mandate to
23 serve the Québec native load?

24 R. Well, yes, that's HQD.

25 Q.85 « D », okay.

1 R. The Distributor.

2 Q.86 And on page 10, you wrote:

3 « Point-to-point
4 service and native
5 load service must be
6 kept mutually
7 exclusive. »

8 Right?

9 R. Yes.

10 Q.87 So, when one is serving the native load,
11 that service is to be governed by Part IV,
12 which is specific to Québec. I understand
13 you're not perhaps as familiar with Part
14 IV but you understand that when it is for
15 purpose of serving the native load, it is
16 to be regulated by Part IV of our Tariff,
17 you know that?

18 R. Yes.

19 Q.88 I think that solves the issue. I would
20 like now to move back to page 31, line 19,
21 of your report. Page 31, line 19. And I
22 quote you, you say:

23 « Any off-system
24 resource also needs to
25 be considered by HQT

1 *in planning and*
2 *operating its*
3 *system. »*

4 And you are referring here to section 37.1
5 that is quoted above, in part. And below
6 you are suggesting that there be in
7 addition of a provision dealing with off-
8 system network resources.

9 So, you read section 37.1 from line
10 6 to 18, then you suggest that off-system
11 resources also need to be considered, and
12 then you suggest some additional language
13 in section 37.1. Is that a fair summary
14 of what we see here?

15 R. Yes.

16 Q.89 Are you under the impression that Hydro-
17 Québec is not considering what you call,
18 and we may not have the same definition,
19 but that we are not considering off-system
20 resources? Are you under the impression
21 that we are not, that TransÉnergie is not
22 considering off-system resources in its
23 planning?

24 10H02

25 R. What do you mean considering?

1 Q.90 Well, I'm just using the words you're
2 using, you're saying:

3 « Any off-system
4 resource also needs to
5 be considered by
6 HQT... »

7 A. « ... in planning and
8 operating its
9 system. »

10 Q.91 Yes. Are you suggesting that HQT is not
11 considering off-system resources in its
12 planning and operating processes?

13 R. Well, I think there is a... I think that
14 there is a need... HQT... well, for
15 instance, Churchill Falls is off-system
16 and it's treated as on-system. So, I
17 think there needs to be a clear
18 distinction about that.

19 Q.92 We will try to stay away from Churchill
20 Falls for a number of reasons. I know you
21 testified in Churchill Falls and six
22 régisseurs have already expressed their
23 views on this and they may not agree with
24 what you've just said but let's not go
25 there. You're not here to advance the

1 Churchill Falls position. This is no
2 longer the complaint process, Mr.
3 Sinclair.

4 R. No.

5 Q.93 I'm just asking you, we're in the rate
6 case. So, this is not Churchill Falls.
7 We're asking you whether...

8 R. Well, let me just explain it. Just
9 because Churchill Falls has been addressed
10 in previous cases, it doesn't mean it
11 doesn't apply in a tariff case. So, I'm
12 not here just to advance those issues.

13 Q.94 I'm asking you...

14 Me ANDRÉ TURMEL :

15 Il faut le laisser continuer, Maître. C'est votre
16 question, là, et vous l'avez amenée alors on peut
17 laisser continuer l'expert simplement pour expliquer
18 la notion de on and off-system, puis ça m'apparaît
19 simplement correct au moins de ne pas l'interrompre
20 et de le laisser continuer.

21 LE PRÉSIDENT :

22 Je vais permettre la réponse complète de ce que
23 l'expert était en train de dire. Ensuite, on peut
24 continuer.

25 R. Yes, so, with respect to off-system

1 resources, what I mean by considering is
2 I mean that they should be considered
3 carefully and accurately. And an off-
4 system resource should be treated as an
5 off-system resource. And in accordance
6 with Order 890, these various elements of
7 description of that resource should be
8 given. This is on lines 24 through 34.

9 And as I explained in my
10 presentation, if that information is
11 provided accurately, then the transmission
12 provider can calculate the ATC accurately.
13 And also, as I pointed out, the Régie can
14 monitor the system accurately.

15 Q.95 Okay. But again, we're in a rate case.
16 So, what I see here, and I read 31 unless
17 you want to change that again, but when I
18 read 31, what you're suggesting is that
19 the wording of Section 37.1 should be
20 expanded to include the following words
21 and then you give additional language.

22 And the reason why you're saying we
23 have to amend Section 37.1, is because
24 off-system resources need to be considered
25 by HQT.

1 So, my question to you, and again
2 we're in this rate case, so I'm looking at
3 your report in this rate case, are you
4 under the impression that TransÉnergie is
5 not considering off-system resources in
6 its planning and operating processes?
7 R. Yes, I'm of the opinion that they are not
8 properly considered.
9 Q.96 Okay. And you base this on your
10 experience with Churchill Falls?
11 R. Yes, the treatment of Churchill Falls has
12 not been properly handled within the HQ
13 system.
14 Q.97 Okay. I assume you're aware of two
15 decisions rendered by this Board about
16 Churchill Falls? Have you read both
17 decisions?
18 R. Sure.
19 Q.98 Okay. Moving back from that page to pages
20 25 and 28. This is a section where you
21 discuss PPAs and from pages 25 to 28 you
22 present your views on what is a PPA and
23 how these PPAs should be properly
24 designated. Is that correct?
25 R. Yes.

1 Q.99 Now, on page 27, you present your views on
2 how these PPAs have to be properly
3 interpreted and you say from pages 8 to 10
4 that:

5 « The primary element
6 of this determination
7 - and the
8 determination you
9 refer to firmness - is
10 the nature of the
11 penalties of the
12 liquidated damages and
13 associated with the
14 interruption. »

15 Is this still your testimony, Mr.
16 Sinclair?

17 R. Yes.

18 Q.100 Now, we said earlier and you agreed that,
19 in Québec, we have special Part IV to deal
20 with native load issues. You remember
21 that?

22 R. Yes.

23 Q.101 Now, perhaps I need not to refer you to
24 our relevant Section 1.41 but you're aware
25 that in the current tariff and in the

1 proposed tariff, a contract may be a
2 designated resource?

3 R. Yes.

4 Q.102 It's already there?

5 R. Yes.

6 Q.103 Okay.

7 LE PRÉSIDENT :

8 Maître Dunberry, juste pour une question
9 d'intendance...

10 Me ÉRIC DUNBERRY :

11 Oui.

12 LE PRÉSIDENT :

13 ... vous aviez annoncé environ une heure et je ne
14 sais pas si vous rentrez dans cette section-là si
15 vous en avez pour très longtemps.

16 Me ÉRIC DUNBERRY :

17 On peut prendre une pause maintenant, Monsieur le
18 Président.

19 LE PRÉSIDENT :

20 Parce que...

21 Me ÉRIC DUNBERRY :

22 Dans 45 minutes j'aurai terminé.

23 LE PRÉSIDENT :

24 C'est surtout pour la planification, d'être certain
25 de pouvoir terminer...

1 Me ÉRIC DUNBERRY :

2 Oui.

3 LE PRÉSIDENT :

4 ... l'interrogatoire de monsieur Bennett et les
5 questions de la Régie s'il y en avait et les
6 réinterrogatoires s'il y en avait.

7 En tout cas, on peut peut-être prendre la
8 pause pour s'assurer s'il était plus prudent de
9 commencer tout de suite avec monsieur Bennett, peut-
10 être que ce serait un bon moment pour le faire mais,
11 en tout cas, prenons une pause de 15 minutes
12 ensuite...

13 Me ÉRIC DUNBERRY :

14 Parfait.

15 LE PRÉSIDENT :

16 ... on continuera le tout.

17 Me ÉRIC DUNBERRY :

18 Je vous remercie.

19 SUSPENSION DE L'AUDIENCE

20 10H29

21 REPRISE DE L'AUDIENCE

22 LA GREFFIÈRE :

23 Veuillez prendre place, s'il vous plaît.

24 LE PRÉSIDENT :

25 Alors, reprise de l'audience.

1 Me ÉRIC DUNBERRY :

2 Monsieur le Président, alors pour nous assurer que
3 monsieur Bennett puisse retourner dans ses terres
4 avant la fin de la journée, on va interrompre
5 maintenant puis on reprendra plus tard.

6 LE PRÉSIDENT :

7 Très bien. Donc, ça va. La Régie apprécie. Ça va
8 permettre d'avancer avec le panel tel que convenu.
9 Merci.

10 CONTRE-INTERROGÉS PAR Me MARIE-CHRISTINE HIVON :

11 Alors, bon matin, bonjour.

12 Q.104 Mr. Bennett.

13 M. GILBERT BENNETT :

14 R. Good morning.

15 Q.105 Good morning. We will, during your cross-
16 examination, we will use the document
17 called *Evidence of the Intervener*
18 *Newfoundland and Labrador Hydro* dated
19 September 23, 2010. You have that with
20 you, Mr. Bennett?

21 R. Yes, I do.

22 Q.106 Okay. I will also ask you to have FERC
23 Order 890 with you. You do have that too?

24 R. Yes, I do.

25 Q.107 And the answers to the requests for

1 information that were filed by
2 Newfoundland and Labrador, I guess it was
3 in October 2010, the first part of the
4 document.

5 R. All right. I may be looking for those, so
6 I'll turn to staff to pull those out for
7 me.

8 Me ANDRÉ TURMEL :

9 Maître Hivon, juste 890, 890 tout court ou...

10 Me MARIE-CHRISTINE HIVON :

11 Tout court.

12 Me ANDRÉ TURMEL :

13 Tout court, O.K.

14 Me MARIE-CHRISTINE HIVON :

15 Q.108 So, if we go to your evidence and for the
16 sake of your cross-examination I'll use
17 the word « report » since... if I refer to
18 evidence, it may be a larger definition,
19 so I'll talk about the report. Did you
20 personally draft that document, Mr.
21 Bennett?

22 R. No, this document was prepared under my
23 supervision. Certainly I didn't
24 personally draft it. The evidence that
25 was filed in this proceeding was... that

1 was the result of collaboration between...
2 or among rather my staff, our legal
3 counsel as well with input from our expert
4 witness.

5 Q.109 So, when you refer to your staff, who in
6 your staff participated in the drafting of
7 that document from NLH?

8 R. Certainly among others, Ms. Johanna
9 Harris, Mr. Chris Kirby and other staff
10 personnel from the Newfoundland and
11 Labrador Hydro. I wouldn't have all the
12 names of everybody who provided data input
13 into this document.

14 Q.110 And you mentioned that you have received
15 the assistance of your expert in this
16 file. It is Mr. Sinclair?

17 R. Yes, that's correct.

18 Q.111 And did Mr. Sinclair write a section of
19 the document or review or make comments?
20 Is it possible to know exactly what was
21 the input of Mr. Sinclair?

22 R. I'm not aware of exactly what editorial
23 input in this document was provided by
24 which either of our expert witness or our
25 counsel or my own internal personnel.

1 Q.112 So, you don't have knowledge about who
2 wrote what in this document?

3 R. I'm satisfied generally with this
4 document. When I talked to the entire
5 team together, everybody is satisfied with
6 their input and the expertise that they
7 provided as a compilation. I'm satisfied
8 with the submission of this document in
9 this proceeding.

10 Q.113 And you just mentioned that you are
11 personally generally satisfied with the
12 content of that document. Are there any
13 parts to which you are not in agreement
14 with?

15 R. No, there are no issues in this document
16 from my perspective.

17 Q.114 Okay. So, you personally are in agreement
18 with the totality of the information and
19 the content of that document?

20 Me ANDRÉ TURMEL :

21 Juste... ma consœur va certainement faire une
22 longue série mais monsieur Bennett est ici à titre
23 de représentant de NLH. C'est un vice-président.
24 C'est un officier de NLH et Nalcor. Alors, là,
25 personnellement, à titre... personnellement ça

1 n'apparaît pas opportun ici. Vous êtes ici à titre
2 de représentant. On lui a déjà demandé s'il était
3 en accord. Là, on fait le détail de
4 personnellement. Je ne vois pas la pertinence de
5 faire une distinction entre le personnellement et à
6 titre de représentant. Cela m'apparaît non
7 nécessaire.

8 Et je veux simplement éviter qu'on
9 fasse... qu'on évite une série de questions qui
10 n'apparaissent pas nécessaires, dont celle-là.

11 Me MARIE-CHRISTINE HIVON :

12 Monsieur le Président, on nous présente un témoin
13 aujourd'hui pour être en mesure de témoigner sur un
14 document qui s'appelle *Preuve de NLH* . Cette
15 personne-là, je pense qu'il est très pertinent de
16 savoir ce qu'elle sait du document sur lequel elle
17 va témoigner. Est-ce que cette personne-là a écrit
18 le document? Est-ce qu'elle est en accord? Alors,
19 je pense que c'est des questions d'usage qui sont
20 pertinentes parce que quand il va falloir poser des
21 questions sur qu'est-ce que veulent dire certaines
22 parties, certaines phrases, certains extraits de ce
23 document-là, je veux m'assurer que les questions
24 sont posées à la bonne personne qui nous est
25 présentée aujourd'hui pour être en mesure de

1 répondre à ces questions-là.

2 LE PRÉSIDENT :

3 Disons que je pense que la Régie va vouloir qu'on
4 avance dans les questions puis on verra au fur et à
5 mesure parce que le témoignage a été adopté par le
6 témoin comme étant son témoignage dans la présente
7 audience.

8 Il vient de dire qu'il est d'accord avec
9 toutes les provisions qui sont là-dedans. Donc, si
10 en cours de route il y a un écueil, bien, on pourra
11 voir, mais la Régie considère que si on posait cette
12 question-là à tous les témoins qui viennent ici
13 devant la Régie, beaucoup travaillent au sein
14 d'organisations et présentent une preuve.

15 En tout cas, je pense que pour les besoins
16 du dossier pour l'instant, c'est suffisant et ça
17 respecte les normes générales applicables et on
18 verra en cours de route. S'il y a un problème, on
19 pourra juger au cas par cas.

20 Me MARIE-CHRISTINE HIVON :

21 Merci, Monsieur le Président. Je pense d'ailleurs
22 que la question était: Est-ce que vous êtes
23 personnellement en accord avec qu'est-ce qui est
24 inclus? Alors, c'est de là dont on parlait.

25 Q.115 Alors, Mr. Bennett, I will refer you to

1 the first page of your report, first
2 paragraph under the heading outlined. We
3 read:

4 *« The present document*
5 *constitutes NLH's*
6 *evidence in file R-*
7 *3669-2008. It deals*
8 *with one main issue. »*

9 And then it's written:

10 *« HQT's contention*
11 *that its OATT does not*
12 *require an equivalent*
13 *to Attachment K of the*
14 *pro forma OATT that*
15 *FERC adopted in Orders*
16 *890, 890-A and 890-B*
17 *on the basis that*
18 *HQT's transmission*
19 *planning already meets*
20 *the requirements of*
21 *FERC aforementioned*
22 *orders. »*

23 So, I'm right, Mr. Bennett, to understand
24 that the totality of this report deals
25 with one subject of this present file

1 which is transmission planning?

2 R. Yes, it primarily deals with that issue.
3 That's right.

4 Q.116 And when you say « primarily deals with
5 that issue », can you confirm that it only
6 deals with that issue of transmission
7 planning which is subject number 3?

8 R. Well, I think, just for clarification,
9 what we say here, is this report deals
10 with one main issue. I don't want to
11 amend this report by finding that there is
12 some detail buried in a paragraph in this
13 report that may deal with another related
14 topic that may be related but not exactly
15 the same as what we're saying here.

16 So, my point is we're dealing with
17 the principal issue in hand.

18 Q.117 So, the main issue is transmission
19 planning, subject number 3 of this
20 present...

21 R. Yes and then the question of the
22 requirement for Attachment K.

23 Q.118 Okay. I would like to refer you to the
24 last paragraph of this first page where it
25 is written:

1 *« NLH challenges HQT'S*
2 *contention and Mr.*
3 *Rose's testimony.*
4 *Specifically we will*
5 *explain that the*
6 *coordination*
7 *requirement envisioned*
8 *in Attachment K of*
9 *FERC Order 890 is not*
10 *met by the various*
11 *elements of HQT's*
12 *actual planning*
13 *processes identified*
14 *by Mr. Rose. »*

15 And then, on page 2, in the last
16 paragraph, it is written:

17 *« NLH will provide*
18 *evidence herein that*
19 *challenges the*
20 *conclusion provided by*
21 *Mr. Rose's testimony.*
22 *Specifically, we will*
23 *explain that the*
24 *coordination*
25 *requirement of*

1 *Attachment K described*
2 *at paragraphs 444 to*
3 *454 of FERC Order is*
4 *not met by the various*
5 *elements of HQT's*
6 *actual planning*
7 *processes identified*
8 *by Mr. Rose. »*

9 And in conclusion, if I refer you to page
10 26 of the report, the first sentence of
11 that conclusion is that:

12 « *HQT's current*
13 *transmission process*
14 *does not meet the*
15 *coordination*
16 *requirement of FERC*
17 *890. »*

18 Is it fair, Mr. Bennett, to say that this
19 report focuses principally on the
20 coordination principle of transmission
21 planning in FERC Order 890?

22 R. I think the question of coordination is
23 one of the issues that's outlined in this
24 report but we do talk about some of the
25 other nine principles along the way.

1 Q.119 Do you agree with me that the coordination
2 principle is one of the nine principles
3 mentioned by FERC in... in FERC Order 890?

4 R. Yes, yes, I would agree with that.

5 Q.120 Okay. I would now like to refer you to
6 page 3 of your report under Section 1,
7 FERC Order 890 on transmission planning.
8 I understand from this section that goes
9 from page 3 to page 8, that you are giving
10 your interpretation of a certain number of
11 references taken from FERC Order 890 or
12 NLH is presenting its interpretation. I
13 understand it's not your personal
14 interpretation of FERC Orders here?

15 R. We've offered... we've offered extracts or
16 quotes from the Order in bringing forth,
17 I guess, our view of what the requirements
18 are in the planning process and we've
19 referenced the applicable sections of the
20 Order that speak to those.

21 Q.121 And have you personally read FERC Order
22 890, 890-B, 890-C, 890-D and 890-A
23 relating to transmission planning?

24 R. I have not read every paragraph of each of
25 those orders. I mean, I have the two

1 binders in front of me and while I have,
2 you know, a level of general familiarity
3 with the tariffs or with the Order rather
4 and I've looked at the relevant paragraphs
5 at one time or another throughout the two
6 years of this proceeding, I can't say that
7 I'm an expert on Order 890 and that I've
8 read every page of the Orders.

9 Q.122 And if we focus on the sections of these
10 Orders relating to transmission planning,
11 which is mainly the subject of this
12 report, is it the same answer?

13 R. I would say that at one time or another
14 over the past two years, I have looked at,
15 you know, various relevant sections of the
16 Orders but I can't say that here today,
17 you know, a couple of years after this
18 proceeding has started that I would be
19 familiar in detail with those sections.

20 I have a general knowledge of the
21 Order but that's as far as I would go.

22 Q.123 Okay. And so you are not the person who
23 chose these extracts to support NLH's
24 evidence in this...

25 R. That's correct. Those extracts were

1 selected by our counsel, by our expert
2 advisors and staff who actually prepared
3 this document.

4 Q.124 I will ask you questions, Mr. Bennett, on
5 the content of the report and it will
6 include FERC's references. So, I hope we
7 can still... you can still have some
8 answers for us but let's continue.

9 On page 5 of your report, the first
10 paragraph which is not a reference, a
11 quoted reference, you mention:

12 *« By requiring that*
13 *transmission customers*
14 *and other stakeholders*
15 *be included in the*
16 *early stage of*
17 *transmission planning,*
18 *FERC's goal was to*
19 *eliminate some of the*
20 *existing opportunities*
21 *for discrimination. »*

22 And then you quote paragraphs 423, 424 and
23 425 of FERC Order. I would like you to
24 take these paragraphs in FERC Order 890,
25 Mr. Bennett. You have that with you?

1 R. Yes, I do.

2 Q.125 Okay. And I would like you to go back to
3 paragraphs, starting at 421 and 422. I
4 will give you the time to read these
5 paragraphs. And my first question will
6 be: Is it the first time that you had the
7 occasion to read these paragraphs?

8 10H45

9 R. I think over the past couple of year since
10 this proceeding has been underway, I can
11 recall at one occasion I think that I may
12 have sat down and... during a period when
13 I had been reading other documentation
14 materials that I had been engaged in in
15 the course of my responsibilities as vice
16 president for a construction project, I
17 think I did sit down and read this Order.

18 But it was some time ago and I
19 wouldn't say that, you know, I'm... I can
20 see it here now. If there's a specific
21 question I can deal with, maybe we can go
22 to that approach.

23 Q.126 So, you are quoting paragraph and you
24 start the quotation, the reference, at
25 paragraph 423 and my question is do you

1 agree with me that paragraphs 421 and 422,
2 that we will read, should be included to
3 have a more complete vision or
4 understanding of what FERC is referring
5 to, or the context of what you are quoting
6 in your report, but to have the more
7 complete picture of what FERC is referring
8 to. Do you think it would be more
9 appropriate to have also references to 421
10 and 422?

11 R. Well, I think our expert witness, Dr.
12 Sinclair, has spoken to this and I think
13 he indicated in his testimony that the
14 question of congestion, which I think
15 you're referring to in paragraph 421 in
16 particular, a decline in transmission
17 investment, wasn't necessarily the only
18 reason why some of the reforms that are
19 proposed in Order 890 were relevant.

20 So, I'm not going to disagree with
21 that previous testimony.

22 Q.127 And you are referencing in your report to
23 paragraphs 423 to 425 and you say:

24 « FERC's goal was to
25 eliminate some of the

1 *existing opportunities*
2 *for undue*
3 *discrimination. »*

4 It's in your report on page 5.

5 R. Yes.

6 Q.128 Now, if we look at paragraphs 421 and 422,
7 and we can read that for the record if
8 it's necessary, at paragraph 421:

9 « *As the Commission*
10 *stated in the NOPR,*
11 *the nation has*
12 *witnessed a decline in*
13 *transmission*
14 *investment related to*
15 *load growth in the ten*
16 *years since Order #888*
17 *was issued.*
18 *Transmission capacity*
19 *per megawatt of peak*
20 *demand has declined in*
21 *every NERC region.*
22 *Transmission*
23 *constraints plague*
24 *most regions of the*
25 *country has reflected*

1 in limited amount of
2 ATC posted in many
3 regions, increased
4 frequency of denied
5 transmission requests,
6 increasingly common
7 transmission service
8 interruptions or
9 curtailments and
10 rising congestion
11 costs in organized
12 markets. »

13 And at 422:

14 « We do not believe
15 that the existing pro
16 forma OATT is
17 sufficient in an era
18 of increasing
19 transmission
20 congestion and the
21 need for significant
22 new transmission
23 investment. We cannot
24 rely on the self-
25 interest of

1 *transmission providers*
2 *to expand the grid in*
3 *a non-discriminatory*
4 *manner, although many*
5 *transmission providers*
6 *have an incentive to*
7 *expand the grid to*
8 *meet their State-*
9 *imposed obligations to*
10 *serve. They can have*
11 *a disincentive to*
12 *remedy transmission*
13 *congestion when doing*
14 *so reduces the value*
15 *of their generation or*
16 *otherwise stimulates*
17 *new entry or greater*
18 *competition in this*
19 *area. For example, a*
20 *transmission provider*
21 *does not have an*
22 *incentive to relieve*
23 *local congestion that*
24 *restricts the output*
25 *of a competing*

1 *merchant generator if*
2 *doing so will make the*
3 *transmission*
4 *provider's own*
5 *generation less*
6 *competitive. A*
7 *transmission provider*
8 *also does not have an*
9 *incentive to increase*
10 *the import or export*
11 *capacity of its*
12 *transmission system if*
13 *doing so would allow*
14 *cheaper power to*
15 *displace its higher*
16 *cost generation or*
17 *otherwise make new*
18 *entry more profitable*
19 *by facilitating*
20 *exports. »*

21 And then starts your reference to
22 paragraph 423:

23 *« As the Commission*
24 *explained in Order*
25 *888... »*

1 And it continues, paragraphs 424 and 425.

2 So, my question was do you agree with
3 me that these three paragraphs should be
4 read with these two additional paragraphs
5 to have a complete picture of FERC's
6 presentation of the context of the
7 proposed modifications?

8 R. I'm not going to... I don't think it's
9 appropriate for me to express an opinion
10 on the validity of those various
11 paragraphs. The point that we were trying
12 to make is encapsulated in, to my opinion,
13 in the ones that we referenced in our
14 report. And if there's another point to
15 be made, that wasn't really the point we
16 were interested in. We were trying to
17 highlight our issues and that's why we
18 used the reference that we did.

19 Q.129 So, you cannot testify today for NLH on
20 the fact that these references could be
21 completed by something else or that it
22 would be appropriate to take other
23 references to complete the picture?

24 R. I think that...

25 Me ANDRÉ TURMEL :

1 Objection là-dessus. Si vous permettez.

2 Q.130 Sorry, Mr. Bennett.

3 R. Sure.

4 Me ANDRÉ TURMEL :

5 Quand ma consœur reformule, peut-être qu'elle doit
6 être prudente là. Je pense que la réponse a été
7 donnée assez clairement...

8 Me MARIE-CHRISTINE HIVON :

9 C'est quoi votre objection, Maître Turmel?

10 Me ANDRÉ TURMEL :

11 Bien, je m'objecte à votre question parce que la
12 reformulation...

13 Me MARIE-CHRISTINE HIVON :

14 Pour quel motif?

15 Me ANDRÉ TURMEL :

16 ... était inexacte. Parce que vous avez eu une
17 réponse et là je comprends que vous essayez pour une
18 deuxième, troisième tentative. Je veux juste
19 m'assurer que... quand il vient de vous dire que:
20 « Bien oui, nous, c'est ce qu'on pense, c'est notre
21 preuve. »

22 Et souvent, HQT nous reproche de tenter de
23 faire dire aux témoins d'HQT ce qu'on aimerait
24 qu'ils disent et on nous dit: « Bien, vous le ferez
25 à votre preuve. »

1 Alors, si vous n'êtes pas d'accord avec
2 421, 422, qui devraient être inclus ou pas, vous le
3 direz, vous le plaideriez. Mais ça ne sert à rien
4 d'exiger du témoin qu'il dise que, comme vous
5 pensez, que 421, 422... vous pouvez le plaider, ça,
6 je suis d'accord avec vous, et on fera valoir nos
7 points. Mais que la preuve de NLH ne contienne pas
8 des paragraphes que vous aimeriez... que vous auriez
9 aimé y voir et que... ça ne m'apparaît pas une
10 question pertinente, parce que vous avez eu la
11 réponse.

12 Me MARIE-CHRISTINE HIVON :

13 Monsieur le Président, d'abord, je comprends que mon
14 confrère a une objection. Je n'ai pas bien compris
15 les motifs de l'objection. Je pense que ma question
16 était je comprends que NLH, vous ne pouvez pas,
17 aujourd'hui, répondre à ma question si ces
18 références additionnelles... si vous avez une
19 opinion sur ces références additionnelles ou si
20 elles devraient également... il serait approprié
21 qu'elles soient lues dans son contexte.

22 Je pense qu'ici on va avoir des
23 difficultés à savoir quelle est... à poser des
24 questions à savoir quelle est la position de NLH
25 parce que ce que je comprends de ce document-là

1 c'est qu'il a été préparé et que, finalement, il y
2 a des aspects d'expertise là-dedans de monsieur
3 Sinclair, il y a des aspects de plaidoirie de Fasken
4 Martineau, alors ça va devenir difficile.

5 Et je comprends que monsieur Bennett est
6 incapable de répondre à ces questions-là alors je
7 voulais préciser ça. Si sa réponse c'est: « Non, je
8 suis en mesure de vous répondre. » parce que je
9 reformulais sous forme de question, et il n'a pas eu
10 l'occasion de répondre et c'est mon confrère qui
11 s'est objecté, à ce moment-là, qu'il me dise qu'il
12 est en mesure de répondre et on va pouvoir obtenir
13 une réponse et passer à la question suivante.

14 Me ANDRÉ TURMEL :

15 Simplement en terminant, Monsieur le Président,
16 quand HQT nous présente des témoins, des témoins je
17 dirais exécutifs, ou des représentants, par exemple,
18 madame Courville ou... on pose des questions
19 générales et la tradition veut qu'on n'entre pas,
20 bien, dans le détail du fin détail. Et souvent la
21 question qui est... le représentant d'HQT vient
22 présenter la preuve de manière générale et le
23 représentant d'HQT indique: « Bien, votre question
24 va au-delà du détail que je peux vous donner. » Ils
25 avaient toute l'occasion de poser leurs questions de

1 manière écrite puis avoir des renseignements écrits.

2 Alors, on pourrait jouer à ce jeu-là
3 longtemps mais je veux dire on l'a bien mentionné,
4 monsieur Bennett est ici comme un client du
5 Transporteur. C'est un officier de la compagnie.
6 Qu'on vienne lui demander dans les 5000 pages si
7 deux paragraphes auraient dû être ajoutés, ils
8 feront valoir ce point-là.

9 Mais sinon, on va passer, quoi, les
10 quatre... les prochaines quatre heures à dire: « Tel
11 paragraphe n'a pas été ajouté, aurait-il dû être
12 ajouté? », d'une part. Et d'autre part, qu'on
13 laisse sous-entendre que ce document-là vient... a
14 été confectionné de toutes sortes... les documents
15 qui émanent d'Hydro-Québec ont le regard
16 certainement des employés d'Hydro-Québec, des
17 représentants d'Hydro-Québec, de leurs conseillers
18 juridiques. Alors, qu'on essaie de laisser entendre
19 que c'est un document confectionné un peu avec
20 plusieurs mains et que ceci serait problématique, ça
21 m'apparaît inapproprié.

22 LE PRÉSIDENT :

23 Un instant.

24 Alors, la Régie va permettre la ligne de
25 questions en invitant le procureur que les questions

1 visent à clarifier est-ce que tel paragraphe a été
2 pris en compte, si oui pourquoi, si non pourquoi.
3 Et la Régie ne voudrait pas permettre par contre un
4 genre de négociation avec le témoin: « Est-ce qu'on
5 voudrait ajouter différentes choses à la preuve
6 elle-même? » La preuve est là, et sur ce point-là,
7 la Régie rejoint l'argument de maître Turmel que ça
8 va être facile pour vous, comme procureur du
9 Transporteur, en plaidoirie, de contextualiser, de
10 *challenge* la façon dont c'est présenté peut-être.
11 Mais pour les fins de l'avancement, y aller avec des
12 questions précises et de clarification sur qu'est-ce
13 qui a été pris en compte, qu'est-ce qui ne l'a pas
14 été, pourquoi et... dans cette mesure-là, la Régie
15 permet la ligne de questions.

16 Me MARIE-CHRISTINE HIVON :

17 Merci, Monsieur le Président.

18 Q.131 So, Mr. Bennett, I will maybe phrase
19 another question. Do you know why... have
20 you taken into consideration paragraphs
21 421 and 422 when, at page 5 of your
22 report, you mention that FERC's goal was
23 to eliminate some of the existing
24 opportunities for undue discrimination?

25 R. No, I don't know the basis for, you know,

1 whether or not it was appropriate to
2 include those two previous paragraphs.
3 You know, looking at this document, trying
4 to understand whether a previous paragraph
5 is relevant to the ones that we've quoted,
6 I think there will be a legal argument
7 there that from my perspective, as an
8 engineer, it's not my place to make a
9 determination.

10 As I mentioned, this document was
11 prepared with multiple inputs, including
12 by our counsel. So, I'm satisfied that
13 paragraphs 423 to 425 make the point that
14 we were trying to make corporately.

15 I can't make any representation as to
16 why or why not it would be appropriate to
17 include other references from the Order.

18 Q.132 So, the other question I have is do you
19 know if it has been considered, these two
20 paragraphs?

21 R. No, I don't know that level of detail.

22 Q.133 You don't know. I would now like to refer
23 you to page 6 of your report. In the last
24 paragraph, starting with « *Furthermore* »,
25 it is mentioned:

1 *« Furthermore, in the*
2 *part of the Order*
3 *related to determining*
4 *significant and*
5 *recurring congestion,*
6 *FERC insisted on the*
7 *part played by*
8 *stakeholders,*
9 *including transmission*
10 *customers and network*
11 *planning. FERC*
12 *requested that*
13 *transmission providers*
14 *adopt an approach that*
15 *ensures that economic*
16 *studies required under*
17 *this principle are*
18 *focused on customer*
19 *needs and concerns,*
20 *not administratively*
21 *determined metrics*
22 *that may bear no*
23 *necessary relation to*
24 *those concerns. »*

25 And then you refer to paragraphs 542 and

1 547 of FERC Order 890. Am I right to
2 understand here, Mr. Bennett, that we are
3 referring... you are referring to another
4 planning principle called economic
5 planning study?

6 R. I'm just going to take a moment and look
7 at those paragraphs, if I can.

8 Q.134 If it can help, Mr. Bennett, I refer you
9 to paragraph 529 of the Order which is the
10 beginning of this section.

11 R. Yes. And in 529, we were talking about
12 economic planning studies, that's correct.

13 Q.135 So, this is correct. And do you agree
14 with me that this principle that FERC
15 includes in the transmission planning
16 process is aimed at addressing congestion
17 problems or integration of new resources?

18 R. That would be my read of this, yes, we're
19 talking about new resources and
20 congestion, that's correct.

21 Q.136 Are you aware, Mr. Bennett, of the
22 existence of a specific process in
23 TransÉnergie's OATT to request integration
24 of new resource exploratory study?

25 R. In the existing Tariff, if I recall, that

1 provision is probably going to be found in
2 section 12 of the Tariff, if I recall,
3 12a) I believe, yes.

4 Q.137 Yes. So, you know about that. Do you
5 know if NLH ever had or requested such
6 exploratory study?

7 R. If I recall, and I don't have the Tariff
8 in front of me, but if I recall, that was
9 for integration of new resources here in
10 this system and I don't understand that
11 that process is inclusive and includes
12 other interested stakeholders and other
13 customers following the other principles
14 that are identified by FERC in the Order.
15 So, if I can have a moment, I will just
16 take a look at the Tariff section. Yes,
17 I see...

18 11H00

19 Q.138 So, you have looked at the article?

20 R. Yes, I have.

21 Q.139 And can you identify to us where in this
22 section it is mentioned that it is only
23 for integration of a resource?

24 R. My notion is that the first sentence prior
25 to the request to connect to a generating

1 station, I would say that that's a local
2 resource, a generating station on the
3 transmission provider system, that's my
4 interpretation of that sentence.

5 Q.140 Okay. So, NLH never had such a plan
6 within the limit of Québec, so no study
7 was ever...

8 R. That's correct.

9 Q.141 ... asked or requested under that article?

10 R. We have no plans for development here in
11 Québec, so we don't see that this would be
12 applicable to us.

13 Q.142 But we are not specifically talking only
14 about NLH here. So, you were aware that
15 this process existed, that this request
16 for exploratory study was within our OATT
17 when this report was prepared and is it...
18 Yes? So, your answer would be yes?

19 R. Yes, I was aware that this provision
20 existed in the existing tariff, yes.

21 Q.143 And were you here when Mrs. Marie-Claude
22 Roquet testified on the panel number 3 for
23 the transmission provider on October 20 to
24 22?

25 R. No, to my understanding, this is the first

1 time I've appeared in this proceeding.
2 Q.144 You were not present in this room...
3 R. No, no, I wasn't.
4 Q.145 ... when she testified?
5 R. No, no, I wasn't in the room.
6 Q.146 Was it brought to your knowledge that
7 these proceedings have been used around
8 200 times by various generators to
9 TransÉnergie?
10 R. No, that wasn't brought to my attention.
11 Q.147 Okay. Do you know what the concept of
12 congestion means in the United States
13 electricity industry?
14 R. I think generally speaking, the situation
15 of congestion would exist when there is
16 more demand for any resource than there is
17 capacity available to meet that need. But
18 in the specific interpretation of what it
19 means in the U.S., I'd probably turned to
20 Dr. Sinclair to deal in that issue.
21 Q.148 So, you personally or as a representative
22 of NLH, the knowledge about the
23 congestion, what the concept of congestion
24 means in the United States electric
25 industry, you cannot testify on that?

1 R. I have a general... as I said, I have a
2 general understanding of the concept but
3 the specifics of how that approach is
4 applied in the U.S. from a regulatory
5 perspective require detailed knowledge to
6 the tariff and, at that point in time, I
7 would defer to an expert, to gain advice
8 in that area.

9 Q.149 And your general understanding of the
10 concept is what you just referred to?

11 R. That's correct.

12 Q.150 Okay. I'm right to understand that this
13 evidence, this report filed by NLH does
14 not contain an analysis of the issue of
15 congestion in the United States or in
16 Québec? This evidence does not contain
17 any analysis of the issue of congestion in
18 the United States or in Québec?

19 R. I didn't... I do recall comments made to
20 this proceeding, of course, that the
21 requirement for a planning process, you
22 know, is not simply driven by congestion.
23 So, that was... I think that was a matter
24 that Mr. Rose and Dr. Sinclair have traded
25 perspectives on. So, no, we didn't limit

1 or get into a detailed discussion of
2 congestion in this report.

3 Q.151 Or an analysis of whether congestion...
4 the comparison between the United States
5 and Québec with respect to the issue of
6 congestion or the issue of investments?
7 There is no analysis in this written
8 evidence here, factual...

9 R. No factual analysis, no.

10 Q.152 I now refer you to page 8 of your report,
11 the third paragraph starting by « As
12 indicated »:

13 « As indicated in the
14 quote above, reducing
15 the amount of system
16 planning activities
17 that are conducted in
18 isolation also applies
19 as an objective in
20 planning conducted
21 between neighbouring
22 systems. In fact,
23 FERC established the
24 principle of regional
25 participation as one

1 *of its nine planning*
2 *principles. FERC's*
3 *Order 890 directed*
4 *transmission providers*
5 *to coordinate with*
6 *interconnected systems*
7 *to share system plans*
8 *to ensure that they*
9 *are simultaneously*
10 *feasible and otherwise*
11 *use consistent*
12 *assumptions and data*
13 *and to identify system*
14 *enhancements that*
15 *could relieve*
16 *congestion or*
17 *integrate new*
18 *resources.»*

19 And there is a quote from FERC which is
20 paragraph 523 and I will read it because
21 I have some questions for you.

22 523:

23 *«We adopt the NOPR's*
24 *proposal to include a*
25 *regional participation*

1 *principle as a*
2 *component of the Final*
3 *Rules transmission*
4 *planning process.*
5 *Accordingly, in*
6 *addition to preparing*
7 *a system plan for its*
8 *own control area on an*
9 *open and non-*
10 *discriminatory basis,*
11 *each transmission*
12 *provider will be*
13 *required to coordinate*
14 *with interconnected*
15 *systems to 1) share*
16 *system plans to ensure*
17 *that there are*
18 *simultaneously*
19 *feasible and otherwise*
20 *use consistent*
21 *assumptions and data*
22 *and 2) identify system*
23 *enhancement that could*
24 *relieve congestion or*
25 *integrate new*

1 *resources.»*

2 Do you agree with me that when FERC refers
3 to interconnected systems or neighbouring
4 systems what is referred to are systems
5 within the same Interconnection with a
6 capital I, like Western Interconnection or
7 Eastern Interconnection? Do you have that
8 understanding?

9 R. No, my view of this is that it simply says
10 lower case, interconnected lower case
11 systems and doesn't offer any specific...
12 I don't see anything specific here that
13 would say it's part of a named
14 interconnect.

15 Q.153 Okay. This is your reading of that
16 paragraph that you quote?

17 R. That's my reading, that's right, that's my
18 reading of this paragraph.

19 Q.154 Okay. And on a more general basis, that
20 regional planning was within the big
21 interconnection or synchronized systems,
22 do you have that knowledge or do you have
23 that understanding?

24 R. I think the principle is equally... I
25 mean, is equally relevant. Yes, it makes

1 sense for any operator to coordinate with
2 its interconnected systems. But there is
3 no limitation here that says that no
4 membership in either the Eastern or
5 Western Interconnect is a prerequisite to
6 that, to my reading.

7 Q.155 To your reading of that specific
8 paragraph...

9 R. That's correct.

10 Q.156 ... that is included in the reference?

11 R. Right.

12 Q.157 Okay. And FERC is talking about systems
13 within the same control area. Right? The
14 system plan for its own control area?

15 R. It says:

16 *«In addition to*
17 *preparing a system*
18 *plan for its own*
19 *control area... »*

20 Q.158 Its own control area.

21 A. *«... it should*
22 *coordinate with*
23 *systems that are its*
24 *neighbours. »*

25 It would my interpretation of that

1 statement.

2 Q.159 Okay. And this principle of regional
3 participation is again from this quotation
4 aimed at relieving congestion or
5 addressing the integration of new
6 resources if I refer to the last part
7 of...

8 R. That's right. I think it says, you know,
9 to identify system enhancements that could
10 accomplish those two goals, yes.

11 Q.160 Just to make sure that I understand NLH's
12 position on that, is that when you read
13 interconnection or interconnected systems
14 in this FERC planning principle, you refer
15 to the... you don't refer to the big
16 interconnection as it is known in the
17 United States like Eastern
18 Interconnection, Western Interconnection
19 or the Interconnection of Québec?

20 R. I don't read it that way. I read it to
21 coordinate, to paraphrase from my
22 perspective, to coordinate with your
23 neighbours.

24 Q.161 Okay. At the bottom of page 8, second
25 section of this report entitled *Mr. Rose's*

1 *Testimony and Regulatory Processes in*
2 *Québec*, I understand from this first
3 paragraph, Mr. Bennett, and I will give
4 you time to read it, that you will address
5 or you address each of the regulatory
6 processes introduced by Mr. Rose and you
7 explain why, on NLH's view, these
8 processes do not provide a planning and
9 coordination envisioned in Order 890.

10 Is this section based on again your
11 personal knowledge of these processes?

12 R. No, again, this report is a compilation of
13 counsel, staff and our expert input.

14 Q.162 And you have not participated personally
15 in these processes as a matter of fact?

16 R. I'll just go through them for a moment.
17 I think NLH has participated in
18 proceedings before the Régie in respect of
19 investment files. Of course, we
20 participated in the complaint process at
21 one time or another and we've participated
22 in the system impact study process. Those
23 are the ones that come to mind.

24 Q.163 Okay. And you personally, am I right to
25 understand that it is your second

1 appearance before the Régie de l'Énergie,
2 the first one being in the complaint files
3 of NLH?

4 R. That's correct.

5 Q.164 Okay. On page 9 of the report, fourth
6 paragraph, under sub-heading 1) *Mr. Rose's*
7 *Testimony*, the paragraph starting with:

8 « *Although Mr. Rose*
9 *mentions that HQT's*
10 *customers could take*
11 *part in some of these*
12 *processes, he fails to*
13 *examine the issue of*
14 *whether they actually*
15 *do.* »

16 Am I right to understand when I read that,
17 Mr. Bennett, that what you're suggesting
18 is that we should not look at the process
19 itself but we should look at whether
20 transmission customers or other
21 stakeholders participate in these
22 processes?

23 R. I think all we said here is that he didn't
24 in his report, he didn't discuss, you
25 know, the issue of whether do they do or

1 what they get out of the process. That's
2 all we're referring. That's all I see
3 there. He didn't examine that.

4 Q.165 Well, you said he fails, he fails to
5 examine.

6 R. He fails to examine the issue, yes.

7 Q.166 So, this is something... this is what he
8 should have done. Is that what you're
9 presuming?

10 R. It may have been helpful.

11 Q.167 Helpful to what?

12 R. I think to further understand the
13 usefulness of the process and the nature
14 of the participation and whether it's
15 before or after the fact and how it
16 constitutes transmission planning which
17 was the point that we were trying to make.

18 Q.168 So, the fact that some, let's say,
19 transmission customers, because this is
20 the case of NLH, participate or do not
21 participate in a process, would have an
22 impact on whether this process is
23 sufficient or not, as with respect to
24 planning?

25 R. I think it would be helpful to, not only

1 considered whether or not they could or
2 would or whether they do but then to also
3 analyze some of the potential reasons as
4 to why it may or may not be useful as a
5 planning process. I think in our, you
6 know, further in this report, those topics
7 are discussed.

8 Q.169 On page 10 of your report, under the sub-
9 heading *Investment Files* , you quote
10 paragraph 43 of the Régie's decision in
11 the decision D-2009-140. And I will quote
12 your translation which is paragraph 43:

13 « *Essentially, the*
14 *Régie must ensure that*
15 *all the projects that*
16 *are submitted for its*
17 *approval meet public*
18 *interest objectives*
19 *and that their costs*
20 *are reasonable.*»

21 So, you agree that one of the Régie's
22 concern is that the projects meet public
23 interest objectives, Mr. Bennett?

24 11H15

25 R. Yes. I have no reason to disagree with

1 the decision on that point.

2 Q.170 And the paragraph begore, paragraph 42 of
3 the Régie's decision. Again, your
4 translation, the Régie says:

5 « The Régie is neither
6 responsible for
7 approving HQT's
8 drawings and
9 specifications nor to
10 design its transport
11 network in its place.
12 This is HQT's
13 responsibility. »

14 Do you agree with me, Mr. Bennett, that
15 the ultimate responsibility for planning
16 remains with the transmission provider?
17 Must remain with the transmission
18 provider?

19 R. Yes, I would certainly agree that
20 ultimately the evolution of a plan to a
21 design, to construction, to operation, is
22 ultimately the responsibility of the
23 transmission provider.

24 I think the point that we make in
25 various places in this report though is

1 that it would be helpful and instructive
2 to customers of the transmission provider
3 to have a better understanding through a
4 transmission planning process of how we
5 got through the plan and to a final
6 design. I think that's the fundamental
7 point we're trying to make here.

8 Q.171 And do you also agree with me that this
9 ultimate responsibility for planning that
10 remains with the transmission provider is
11 recognized by FERC in FERC Order 890? Is
12 it to your understanding or knowledge? I
13 can refer you to...

14 R. Yes, I have no reason to, you know, to
15 object to that suggestion.

16 Q.172 So, just to complete this question, on
17 page 4 of your report you quote the
18 specific paragraph where FERC confirms
19 that. It's paragraph 454, in the middle
20 of the paragraph, that the ultimate
21 responsibility for planning remains with
22 the transmission providers.

23 R. Yes.

24 Q.173 So, you agree with that?

25 R. Yes.

1 Q.174 So, getting back to page 8 I think we
2 were... page 10, sorry... actually, I'm at
3 page 11, the first paragraph, you mention:

4 « The Régie's
5 investment
6 authorization process
7 is not a planning
8 process fulfilling the
9 coordination
10 requirement of FERC
11 Order 890 but rather a
12 public interest and
13 cost-oriented approval
14 process. This is
15 confirmed by the fact
16 that HQT's customers
17 generally do not
18 participate in these
19 files. Instead we
20 mainly find public
21 interest interveners,
22 such as environmental
23 groups and
24 organizations
25 defending the

1 *interests of*
2 *electricity*
3 *consumers. »*

4 So, am I right to understand here, Mr.
5 Bennett, that you're making a distinction
6 between transmission customers and other
7 stakeholders?

8 R. I think transmission customers would
9 represent a subset. Of course, all the
10 stakeholders who have an interest in an
11 approval process. But yes, I think it's
12 fair to say there is a distinction between
13 an environmental group or a non-
14 governmental organization and a
15 transmission customer, they have different
16 interests.

17 Q.175 And here you are criticizing the
18 investment authorization process based on
19 the fact that customers do not... NLH or
20 other customers...

21 R. No.

22 Q.176 ... do not participate in this process?

23 R. No, I'm not saying there's anything wrong
24 with an approval process. It's a
25 necessary oversight function that's

1 carried out by a competent regulator. My
2 point here is that it's not transmission
3 planning, it's not a planning process.

4 And I think, you know, it's important
5 to go back to page 4, paragraph 454, and
6 the part that we've underlined; it's the
7 last sentence. So, where we say here
8 that... and I'll quote from the Order,
9 that:

10 « Customers must be
11 included at the early
12 stage of the
13 development of the
14 transmission plan and
15 not merely be given an
16 opportunity to comment
17 on plans that were
18 developed in the first
19 instance without their
20 input. »

21 So, the point that we're trying to make
22 here is that the investment authorization
23 process is a consideration of a project or
24 a plan that has already been completed and
25 there is a concrete activity for which

1 approval is being sought. But that's not
2 planning, the plan is already considered
3 and been developed and a concrete project
4 has been selected and is being brought
5 forward for approval.

6 So, it's not a criticism of the
7 process at all, we're just saying that
8 it's not a planning process.

9 Q.177 So, it's not a planning process at all, in
10 any... what you would consider any steps
11 of the planning process, this would not be
12 even a step in the planning process?

13 R. It represents the end of the planning
14 process and the transition from, you know,
15 a plan to a process to move forward with
16 approval of a project. And I would
17 distinguish between the consideration of
18 alternatives in the context of planning
19 and the... we often see an environmental
20 assessment, for example, where a proponent
21 is bringing forward a concept that has
22 been developed. And through the
23 environmental assessment process,
24 modifications are made to the design or
25 function of that project, and that is

1 planning because it's activity that's
2 being carried out before construction
3 starts. So, you still have an opportunity
4 to tailor the particular work or
5 undertaking.

6 But that is not consideration of
7 different alternatives. At that point in
8 time, the alternative has been selected
9 and is being brought forward for approval.

10 Q.178 So, for you, there is no consideration of
11 alternatives or explanation of
12 alternatives or discussion about
13 alternatives in this process?

14 R. Oh, there certainly may be. And if I look
15 to environmental assessment, for example,
16 discussion of need, purpose and
17 alternatives is frequently a requirement
18 under our environmental assessment
19 legislation. But comment at that point in
20 time, the plan is ready to go. And I
21 would still go back to paragraph 454 of
22 the Order, transmission customers at that
23 point in time were commenting on the plan
24 that is being presented; it's not the
25 early stage of the process.

1 Q.179 So, you are comparing paragraph 454 with
2 article 73, planning process? This is the
3 comparison you are making?

4 R. Article 73, the investment approval
5 process. Yes, I'm drawing a distinction
6 between project planning and transmission
7 planning as being contemplated in the
8 Order. That's what we are trying to do,
9 yes.

10 Q.180 I would like to refer you to the answers
11 to the Request for Information number 2.2
12 by NLH.

13 Je n'ai pas la cote, Monsieur le
14 Président. It's the only Request for
15 Information I think addressed to NLH and
16 it was answered probably around October
17 13, which was the question 2.2.

18 The question was, and I will use your
19 translation... do you have that document
20 with you, Mr. Bennett?

21 R. Yes, I do, thank you.

22 Q.181 We were in fact specifically referring you
23 to this sentence or this paragraph of your
24 report:

25 « Explain how you

1 *distinguish between an*
2 *environmental group or*
3 *an organization*
4 *defending the*
5 *interests of*
6 *electricity consumers*
7 *and HQT's consumers*
8 *and their interest in*
9 *participating in the*
10 *investment approval*
11 *process. »*

12 Just before reading the answer, Mr.
13 Bennett, did you prepare the answer to
14 these requests for information?

15 R. I didn't draft it, no. But from a
16 corporate perspective, you know, I've
17 supervised generally the preparation of
18 work on this file. I certainly have, you
19 know, an interest in environmental
20 assessment. As you may be aware, I've led
21 our project through the... the generation
22 project through the environmental
23 assessment process over the past number of
24 months. So I do have an interest in that
25 activity and I remember being consulted on

1 this question.

2 Q.182 And this is NLH's answer to this question?

3 R. That's correct.

4 Q.183 And the response is:

5 « Each of the
6 categories of groups
7 have different
8 interests.

9 Environmental groups
10 may intervene in
11 investment files to
12 ensure that projects
13 submitted to the Régie
14 respect the principles
15 of sustainable
16 development.

17 Organizations
18 defending the
19 interests of
20 electricity consumers
21 may be involved so
22 that the rate impacts
23 of the investments are
24 taken into account by
25 the transmission

1 *provider. Finally,*
2 *HQT customers can*
3 *intervene to ensure*
4 *the equitable and*
5 *transparent*
6 *application of Hydro-*
7 *Québec's Open Access*
8 *Transmission Tariff. »*

9 So, what you're saying here is that NLH's
10 involvement in investment approval
11 process, as mentioned in this question,
12 would be to ensure the equitable and
13 transparent application of TransÉnergie's
14 Tariff?

15 R. I think that this is a, you know, this is
16 a very broad question and we offered some
17 potential explanations. I think that when
18 you look at... if we look at these groups
19 again, I think it's fair to say that if
20 you have a consumer group who is
21 intervening in a process, for the most
22 part, they would have an issue with the
23 electricity rates or the rates of the
24 service that they're intervening with
25 respect to.

1 Environmental groups have very
2 different perspectives. They may say that
3 this project is or is not compatible with
4 sustainable development, they may object
5 at all, they may say that there are better
6 alternatives. Certainly we see that
7 frequently in environmental assessments.
8 You may find that people would say:
9 « Well, no, this project should not happen
10 at all, people should conserve, people
11 should use less, we should use different
12 alternatives. »

13 And as from a customer perspective,
14 I think it's fair to say that if you're
15 the customer who is affected by the
16 investment itself, well then you're
17 probably there supporting the particular
18 undertaking. And if a customer has an
19 issue with the project or an investment
20 decision, they may say: « Well, we're
21 going to intervene and we may intervene
22 because there is an issue with the
23 process. »

24 And so there's a very broad variety
25 of reasons why different individuals or

1 organizations may intervene and all we did
2 here was provide some explanation as to
3 some of the possible circumstances under
4 which that intervention might take place.
5 But it certainly wasn't meant to be the
6 totality of the reason why somebody would
7 intervene into the process.

8 I think you see that we use words
9 like « could » and « can » to qualify the
10 statement that was made here.

11 Q.184 But I just want to make sure I understand
12 and my question was specifically referring
13 to your part of the answer on HQT's
14 customers, HQT's customers, transmission
15 customers, right? And the answer you
16 provide here. So, you're telling us there
17 may be others but the answer that is
18 provided here is that to ensure the
19 equitable and transparent application of
20 the Tariff. So, is it for you a process
21 for surveying that the Tariff is not
22 violated or surveying that the Tariff is
23 applied adequately by the Régie or by the
24 transmission provider. Is that what would
25 prompt an intervention in a capital

1 project approval file?

2 R. It could be.

3 Q.185 It could be.

4 R. It could be. We say customers can, yes.

5 Q.186 So, in your answer, what would be their
6 interest, this is it could be, so this is
7 the one that you're referring to. What
8 would be the other interest of a customer,
9 transmission customer to intervene?

10 R. Oh, they may have an interest in
11 supporting the project if they're actually
12 the customer who is affected by the
13 project in question. I think there's a
14 broad variety of reasons why, you know,
15 why a customer could intervene.

16 But certainly, you know, at the end
17 of the day, whatever is being undertaken
18 is done in conformance, as far as the
19 transmission provider is concerned, is
20 done in conformance with the Tariff.

21 Q.187 I now refer you to the second paragraph of
22 page 11 where you refer to some results on
23 the participation of different customers
24 to the various investment files and you
25 are providing, in support of your

1 evidence, some appendices listing the
2 various files.

3 And I would like you to go to
4 Appendix 1. Appendix 1, I understand that
5 it is a list of nine files, investment
6 files for investments below \$25 million.
7 And when I go through these nine files,
8 Mr. Bennett, if you can just confirm that
9 NLH never intervened in these files?

10 R. Yes, that's correct.

11 Q.188 And if we move to Appendix 2 called
12 « *Appendix 2 - Specific Investment Files*
13 *of \$25 million and More* ». This is
14 another category, you agree with me?
15 Okay. And we have here a list of 33 files
16 starting in 2002 up to 2010. I understand
17 from this list that NLH intervened in R-
18 3715-2009, which is on the second page.
19 We are on page 6 of the appendices.
20 « *Projet d'ajout et modification des*
21 *équipements de transport requis pour*
22 *l'utilisation des interconnexions HQT-MASS*
23 *et HQT-NE* », this is the name of the file.

24 R. Yes, that's right.

25 11H30

1 Q.189 And NLH also intervened in the R-3696-2009
2 *Projet de mise à niveau du réseau de*
3 *transport principal* which is the last one
4 of this page, on page 6. You see that,
5 Mr. Bennett?

6 R. Yes, I do.

7 Q.190 And am I right to understand that these
8 are the two in which, in this list, in
9 which we see NLH participation?

10 R. Yes, those are the ones that I'm aware of.

11 Q.191 And if we look at this list, there are
12 many files. NLH did not intervene in 31
13 of these 33 files. We could look at the
14 ones that represent the... that they have
15 the most important dollar value. But
16 could you explain to us why NLH did not
17 intervene in these files?

18 R. I think as a general statement when we
19 look at those particular files, they were
20 either, you know, before we were active in
21 the electricity markets outside of our own
22 province or secondly at the time, when
23 those proceedings were underway, we didn't
24 have a particular interest in those files.

25 Q.192 I refer you to question and answer 2.3 of

1 the Request for Information that we just
2 looked at.

3 R. Yes, I have it.

4 Q.193 Okay. And the question, and I will take
5 your translation:

6 « *Explain why NLH has*
7 *participated in only*
8 *three of 33 cases of*
9 *investment proposals*
10 *before the Régie for*
11 *approval of projects*
12 *over 25 million. »*

13 And I apologize, I think there was a third
14 one. I referred you to two but there was
15 a third one which was the *Projet visant*
16 *l'augmentation de capacité et le*
17 *remplacement de plusieurs équipements du*
18 *poste Chomedey.*

19 So, we could go back to the Appendix
20 but there seems to be three files again.

21 R. Yes.

22 Q.194 So, your answer:

23 « *We participated in*
24 *cases that we felt*
25 *were relevant to us in*

1 *the context of our*
2 *commercial*
3 *interests. »*

4 So, can we draw the conclusion that in the
5 projects that you didn't... in the files
6 that NLH didn't intervene, it's because
7 there were no commercial interests for NLH
8 to do so?

9 R. I think that's fair, if we had a reason to
10 intervene in those files, we would have...
11 we would have sought intervention.

12 Q.195 So, that for projects that relate to parts
13 of the TransÉnergie's system that are not
14 relevant for NLH, you would not see the
15 interest to intervene because we see that
16 when we look at the list, there are very
17 specific projects on the whole
18 TransÉnergie's grid. Is that a fair
19 assumption that depending on what kind of
20 projects, where it is and what it relates
21 to, it will or will not represent an
22 interest for NLH?

23 R. I think that... I think that once, you
24 know, once a project has been selected, is
25 moving forward for the most part, you're

1 right, you know, we would not... if we're
2 not interested or we don't see it being
3 important to us or it has little impact,
4 then we would... we may or may not
5 intervene. It would be based on our own
6 interests in those activities.

7 Q.196 I would like to refer you now to page 18
8 of your report. And just to put us in the
9 context, starting on page 17, we are under
10 the sub-heading *Rate Cases*, Mr. Bennett.

11 And the first full paragraph, you
12 refer to page 3... sorry, the first full
13 paragraph:

14 « *As evidenced by the*
15 *table found in*
16 *Appendix 3 in the six*
17 *rate cases mentioned*
18 *in HQT-19, document 1,*
19 *HQT's only customer to*
20 *participate regularly*
21 *in such cases was*
22 *EBMI. However, this*
23 *company did not*
24 *participate in the*
25 *first rate case R-*

1 3401-98. »

2 So, I understand that on the list that you
3 provide in Appendix 3, NLH did not
4 participate in any rate cases and there
5 was a question addressed to you at
6 question 3.1 of the Request for
7 Information. I would refer you to that.

8 R. Yes, I have it here.

9 Q.197 The question was:

10 « *Explain why NLH did*
11 *not intervene in a*
12 *single tariff case?* »

13 And the answer was:

14 « *Prior to 2006, NLH*
15 *was not a customer of*
16 *HQT. Subsequently, in*
17 *2007, NLH did*
18 *participate in Régie's*
19 *case R-3640-2007 as a*
20 *member of the Québec*
21 *iinterconnection and*
22 *energy group.* »

23 So, you were a member of this group?

24 R. Yes.

25 Q.198 And because this group intervened, NLH was

1 part of this... this is what you mean?

2 R. That's right.

3 Q.199 So, besides that, there were no other
4 interventions in a rate case as listed in
5 your Appendix 3?

6 R. That's correct.

7 Q.200 I refer you to pages 24 and 25 of your
8 report, the bottom of page 24, with
9 respect to the *Bureau d'audiences*
10 *publiques sur l'environnement* section.
11 And we also ask a question in the
12 Information Request at 4.1 and I
13 understand that, from that question and
14 answer, that NLH did not intervene in BAPE
15 hearings in Québec, never intervened?

16 R. I've got my pages out of order here but,
17 yes, we have not participated in an
18 environmental assessment here in Québec.

19 Q.201 And in paragraphs 24 and 25, you refer
20 to... starting at the top of page 25, you
21 refer to the Environmental Quality Act.
22 Have you reviewed this statute, Mr.
23 Bennett?

24 R. No, I haven't personally reviewed the
25 statute. Of course, as I mentioned

1 earlier, this document includes input from
2 our legal counsel.

3 Q.202 Your counsel, okay. I would like to refer
4 you to an exhibit filed by HQT, HQT-22,
5 document 2. HQT-22, document 2,
6 *Environmental Impact Assessment Process*.
7 You have that document before you, Mr.
8 Bennett?

9 R. Yes, I do, thank you.

10 Q.203 Have you seen this document before?

11 R. I have not read this document
12 specifically, no.

13 Q.204 Were you provided with a copy of that
14 document in preparation for your
15 testimony?

16 R. I have it available to me here but I'm
17 generally familiar with environmental
18 assessment processes.

19 Q.205 And as a more general question maybe, we
20 can step back and have you had a chance
21 to... have you ever reviewed before the
22 evidence contained in HQT-15 to HQT-27 of
23 TransÉnergie's evidence in the file that
24 was...

25 R. I have not read this material in detail,

1 no.

2 Q.206 Have you reviewed part of that material?

3 R. I'm sure in preparing for, you know, for
4 the proceeding, I've reviewed at a high
5 level most of the material that was
6 available to me.

7 Q.207 When you say reviewed at a high level, was
8 that summary provided to you or did you
9 read parts of documents physically or...

10 R. We would have discussed... we would have
11 discussed as a group material that we
12 thought was relevant in the context of my
13 testimony here today.

14 Q.208 Okay. But you never went through these
15 documents and...

16 R. I have not read...

17 Q.209 ... read the content of these exhibits?

18 R. I have not read these in detail, no.

19 Q.210 So, if I were to ask you whether you would
20 agree with the summary that is made or
21 provided as Exhibit 22, document 2, as a
22 summary of the environmental impact
23 assessment process currently existing in
24 Québec, you would not be in a position to
25 respond to my question?

1 R. It depends on what the question is. If I
2 could just take a moment to look over it,
3 I would probably suspect that the
4 environmental process, the environmental
5 assessment process here in Québec is not
6 unlike the one that we have in
7 Newfoundland and Labrador and maybe
8 similar to what we see with respect to the
9 Federal Regulation.

10 So, if there is a general
11 environmental assessment question that
12 you'd like to pose, I'll try to address
13 it.

14 Q.211 Okay. Well, we will, of course, give you
15 the time to read the document. My
16 question is do you agree that this
17 represents a fair summary of the process
18 existing in Québec actually?

19 R. This looks like to me, you know, to my lay
20 reading a reasonable summary of an
21 environmental assessment process. The
22 notion that there are specific activities
23 that need to be considered or triggered,
24 that would actually trigger an
25 environmental assessment, that's not a

1 surprise that there were procedural issues
2 and timelines contained in the process.
3 I don't see an issue there as well. I
4 mean, this looks in conformance to what I
5 would have expected to see in an EA
6 process.

7 Q.212 And if I were to ask you the same question
8 with respect to HQT-18, document 2, which
9 is the process for approval of capital
10 project by the Régie de l'Énergie, you
11 have not seen this document before?

12 R. I haven't read this in detail, no.

13 Q.213 Have you ever read the Act respecting the
14 Régie de l'Énergie at article 73?

15 R. No, I haven't.

16 Q.214 And the Regulation respecting the
17 condition in cases where authorization is
18 required from the Régie de l'Énergie?

19 R. No.

20 Q.215 And the Filing Guidelines of the Régie de
21 l'Énergie applicable in these cases?

22 R. I haven't read those in detail.

23 Q.216 So, you would not be in a position to
24 confirm whether, in response to my
25 question, whether it's a fair summary of

1 this process in Québec?

2 R. No, no, I can't do that.

3 Q.217 Okay. At the bottom of page 25, as with
4 respect to the BAPE process, the last
5 sentence you say:

6 « *Hydro-Québec is the*
7 *only transmission*
8 *customer whose*
9 *interests were*
10 *discussed.* »

11 Can you just precise for us what you mean
12 by Hydro-Québec?

13 R. Well, I think in the context of the three
14 projects that are referenced there, that
15 those were... that those were constructed
16 for other divisions of Hydro-Québec.

17 Q.218 Do you know which one?

18 R. I can certainly see a project here which
19 is of interest to Hydro-Québec Production
20 and that would be the Chénier-Outaouais
21 transmission line to Ontario. I couldn't
22 confirm right now whether Hydro-Québec
23 Distribution has an interest in one of the
24 other lines. They may.

25 11H45

1 Q.219 Am I right to understand that NLH does not
2 have a commercial interest in the
3 distribution network in Québec, so the
4 planning of the distribution network, for
5 the local load.

6 R. I would say that we haven't thought about
7 that very much but I don't see how we
8 would have a great interest in how
9 distribution customers here in Québec are
10 served with distribution facilities.

11 Me MARIE-CHRISTINE HIVON :

12 Je vais peut-être prendre deux minutes pour faire le
13 tour des questions.

14 Alors, ça terminerait le contre-
15 interrogatoire, Monsieur le Président.

16 LE PRÉSIDENT :

17 Merci, Maître Hivon.

18 Alors, est-ce que la Régie aura des
19 questions? Ou si vous voulez faire le point?

20 Me JEAN-FRANÇOIS OUIMETTE :

21 Non, la Régie n'a pas de questions.

22 LE PRÉSIDENT :

23 Pour l'instant, non?

24 A cette heure-ci, nous allons prendre la
25 pause *lunch* et revenir à 13 h 00 puis la Régie

1 précisera si elle a d'autres questions pour les
2 témoins.

3 SUSPENSION DE L'AUDIENCE

4 13H01

5 REPRISE DE L'AUDIENCE

6 LE PRÉSIDENT :

7 Alors, reprise de l'audience. La Régie n'aura pas
8 d'autres questions pour le témoin.

9 Me ANDRÉ TURMEL :

10 D'accord, donc, ni le Banc, ni maître Ouimette, ni
11 le Banc?

12 LE PRÉSIDENT :

13 C'est ça, c'est ça.

14 Me ANDRÉ TURMEL :

15 Je vous remercie. Alors, à ce moment-ci, je vous
16 demanderais de libérer monsieur Bennett.

17 LE PRÉSIDENT :

18 Alors, Monsieur Bennett, vous êtes libéré pour le
19 présent témoignage and the Régie thanks you for
20 participating.

21 Me ANDRÉ TURMEL :

22 So, you can go. Thanks, Mr. Bennett.

23 CONTRE-INTERROGÉS PAR Me ÉRIC DUNBERRY :

24 But, Mr. Sinclair, you have to stay however.

25 M. ROBERT SINCLAIR :

1 R. It's my pleasure.

2 Q.220 So, Mr. Sinclair, I would ask you to take
3 your report again. I think we left at
4 page 27, looking at PPAs for Power
5 Purchase Agreements.

6 So, we were just reviewing some of
7 these statements that we find in page 27
8 and I was just about to ask you to turn
9 that page and we'll come back to page 27
10 but, at page 28, you make a recommendation
11 to the Régie, page 28, line 17, and I
12 quote you, and this is at the end of your
13 section on PPAs and you conclude with the
14 following recommendation and I quote:

15 « I recommend the
16 Régie expressly
17 endorse the
18 requirements in Order
19 890 that specify the
20 conditions under which
21 PPAs can be designated
22 as network
23 resources. »

24 And I guess in Québec we would say, as
25 opposed to network resources, we would say

1 distributor resources.

2 R. Yes, that's correct.

3 Q.221 Okay. So, this is your recommendation to
4 the Régie this morning?

5 R. Yes.

6 Q.222 Okay. Now, coming back to page 27, since
7 you are recommending that the Régie
8 endorse the FERC requirements for PPAs
9 designation, I thought we should go back
10 to page 27 where you say at lines 8 to 10
11 - and this is where we were:

12 « The primary element
13 of this determination
14 is the nature of the
15 penalties, or
16 liquidated damages,
17 associated with an
18 interruption. »

19 And then, you quote Order 890 at paragraph
20 1453. And then, there is a quote and I
21 would invite you to read that quote. And
22 the following quote which I will read with
23 you says:

24 « Thus, as of the
25 effective date of this

1 *Final Rule, power*
2 *purchase agreements*
3 *designated as network*
4 *resources may only*
5 *contain liquidated*
6 *damages provisions*
7 *that are of the "make*
8 *whole" type.*

9 *Conversely, power*
10 *purchase agreements*
11 *containing LD*
12 *provisions that*
13 *provide penalties of a*
14 *fixed amount, that are*
15 *capped at a fixed*
16 *amount, or that*
17 *otherwise do not*
18 *require the seller to*
19 *pay an aggrieved buyer*
20 *the full cost of*
21 *replacing interrupted*
22 *power, are not*
23 *acceptable. »*

24 These are the requirements and there may
25 be other requirements but, as far as your

1 report is concerned, these are the
2 requirements that this Régie should more
3 or less endorse...

4 R. Yes.

5 Q.223 ... by way of a ruling?

6 R. Yes, or a statement in the Order, yes.

7 Q.224 Or a statement in the Order. Now, at
8 page, I believe, 28, line 14, we learn
9 that FERC Order 890 does not require any
10 specific changes to the *pro forma* OATT to
11 reflect these requirements associated with
12 the designations of PPAs as network
13 resources.

14 So, I guess, you're not asking this
15 Régie to modify the OATT necessarily.
16 What you're asking this Régie, is to
17 endorse these requirements but not through
18 a change in the OATT.

19 I guess FERC didn't do that, so it
20 would be the same approach that you're
21 recommending that there be an order
22 endorsing these requirements but not
23 through a formal change to the actual
24 OATT, is that correct?

25 R. Yes, that's correct.

1 Q.225 And this general endorsement that the
2 Régie would make in its decision in this
3 case, would be applicable on a going-
4 forward basis. It would be applicable to
5 future power purchase agreements, I
6 assume. It would not be retroactive?

7 R. That's correct, yes.

8 Q.226 And as a result of that endorsement, you
9 would expect that this Régie would
10 actually adjust itself to the evolution of
11 FERC requirements as they evolved through,
12 let's say, decisions of FERC, for
13 instance? It could be decisions by FERC
14 interpreting what they mean by liquidated
15 damages and what they mean by penalties
16 and what they mean by this make whole
17 concept and you would expect that the
18 Régie would also endorse not only the
19 requirements but the body of jurisprudence
20 or case law that would actually give
21 meaning to those concepts?

22 R. I guess I would... I see what you're
23 saying. I guess I would recommend that
24 the Régie recognize the issue of
25 liquidated contracts in Order 890 and

1 endorse that as a concept. I suppose that
2 if it were ever litigated that parties
3 could bring up the surrounding case law
4 around it but I don't think the Régie
5 would need to do that but we're getting a
6 little bit out of my area of expertise.
7 Q.227 But when you say that the Régie should
8 endorse FERC's requirements, the
9 requirements include a review of the
10 contractual provisions to determine
11 whether these provisions make the buyer
12 whole. You would expect this Régie to
13 endorse that concept, right?
14 R. That's what I proposed, yes.
15 Q.228 Okay. And if FERC rendered the decision
16 of principle on what it meant by this
17 expression « make whole », you would
18 expect that this Régie would also endorse
19 these decisions by FERC that would give
20 meaning to the concept that the Régie
21 would be endorsing.
22 R. Well, I would say that if the FERC were to
23 change policy in the future, that the
24 Régie would certainly be able to consult
25 us on that evolution but I don't

1 necessarily see how it would be bound to
2 that if it were to endorse these current
3 provisions.

4 Q.229 Okay. So, the Régie should endorse the
5 requirements by FERC but not endorse
6 decisions by FERC or principles advanced
7 by FERC to give meaning to this notion of
8 « make whole »?

9 R. I think it would suffice to endorse the
10 principles.

11 Q.230 And in their application or in their
12 interpretation, would, in your opinion,
13 well not opinion, but would you suggest
14 that this Régie endorse FERC's position on
15 how these principles should be applied or
16 interpreted? Are you suggesting that that
17 be endorsed as well?

18 R. Not necessarily.

19 Q.231 So, the Régie would endorse FERC's
20 requirements but not endorse FERC's
21 rulings, decisions, pronouncements on what
22 these principles mean?

23 R. I think the Régie could endorse the
24 concept and then it could later decide
25 whether the various case law that FERC

1 develops is applicable and can decide at
2 that point.

3 Q.232 But do you find this wise for the Régie to
4 endorse a principle, a requirement and
5 decide later whether it agrees with the
6 way this principle is interpreted or
7 applied with FERC after adopting the
8 principle by FERC?

9 R. No, I'd say it would later on decide
10 whether the evolution of it is
11 appropriate.

12 Q.233 But what you're saying is that this Régie
13 should endorse FERC's requirements and all
14 of FERC's decisions to date with respect
15 to this concept, so at least, there would
16 be a general endorsement of FERC's
17 requirements as expressed in Order 890 and
18 a general endorsement of FERC's decisions,
19 rulings and issuance of principles up to
20 today. That would be endorsed. Is that
21 your invitation to this Régie?

22 R. No, my invitation is to endorse the notion
23 that liquidated damages as contemplated by
24 FERC is very clear in the Order. It's a
25 concept that's useful and should be

1 applied in Québec and I don't think it
2 needs to go back that far into the case
3 law as you suggest to apply that
4 principle.

5 Q.234 I'm just trying to understand. It's like
6 getting married to someone you've never
7 met. You're asking this Régie to endorse
8 a principle that you referred to in your
9 report, page 27, and the principle, as you
10 say, well, it's a principle of making
11 whole and this is done by a determination
12 of a FERC test through the examination to
13 the determination and nature of penalties
14 and of the liquidated damage provisions.

15 And I'm sure that if you and I went
16 back in the United States and started to
17 look at the case law and complaint
18 processes and decisions by FERC, you and
19 I would come up with a number of
20 decisions, a number of writings, doctrinal
21 writings, the literature maybe on this as
22 well.

23 So, are you suggesting that this
24 Régie should endorse all of this, that is
25 the FERC's requirements and the FERC's

1 decisions to date and the body of case law
2 and literature that addresses how this
3 principle should be interpreted and
4 applied?

5 Because I don't see how we can adopt
6 the principle without adopting what comes
7 with the principle.

8 Q.235 I'm not really following your question but
9 it seems that there is a number of
10 recommendations in my testimony, all of
11 which, I suppose, are backed by some kind
12 of FERC case law at some point or another
13 and some FERC determination. So, I don't
14 see it any different then when I suggested
15 attestation should be adopted or
16 designation of resources should be
17 adopted. Those are all backed up by lots
18 of principles and case law, years and
19 years.

20 So, I guess it's up there with my
21 other recommendations and if that requires
22 Régie to interpret some FERC cases, then,
23 to that extent, yes, it would be applied
24 to this principle too.

25 Q.236 So, yes, it would be applicable to these

1 principles?

2 R. Yes.

3 Q.237 Okay. Now, do you know whether this Régie
4 has in the past endorsed principles of
5 this nature, that is agreeing in advance
6 to apply and interpret principles of FERC,
7 endorsing by way of a declaration that it
8 would comply with certain FERC principles
9 in advance on a prospective going-forward
10 basis? Do you know if this Régie has ever
11 done that in the past?

12 R. Well, I don't know if I'm suggesting that
13 they should apply or endorse something in
14 advance. There is a fairly clear concept
15 discussed in the OATT. I think it's a
16 good concept. I think it has lots of
17 value for the provision of open access.
18 I think it's worthwhile to specifically
19 endorse it.

20 If the concept itself evolves in the
21 United States separately, I don't
22 necessarily think the Régie is bound to
23 that. But I'm not an attorney so I don't
24 know what would happen after that.

25 Q.238 But concretely, what you're suggesting is

1 that again going back at page 27, let's
2 try to understand very concretely what
3 this means. If I understand what you're
4 suggesting is that the determination of
5 firmness starts with a review of the
6 contractual documents. The first thing to
7 do is to get a copy of the contract I
8 assume. Is that... is getting a copy of
9 the PPA a starting point, Mr. Sinclair?

10 R. A starting point for whom?

11 Q.239 For a review? I'm not saying for who, I'm
12 saying for the process. You're saying the
13 primary element of the determination is to
14 look at the nature of the penalties,
15 liquidated damages to see if the buyer is
16 made whole. So, to do that, will you
17 agree with me that you need to start with
18 a copy of the contract, whoever is doing
19 it, has to have a copy of the contract?

20 R. Who needs a copy of the contract?

21 Q.240 I mean, I'm not saying who, I'm not asking
22 you who is doing it. I'm saying the
23 process that you're suggesting to
24 determine whether PPA has the right
25 qualities to be designated, you have to

1 look at the penalty and liquidated damage
2 provisions. Okay? I'm not asking you who
3 is doing it because it may be a lawyer, it
4 may be someone else, but it starts with
5 getting a copy of the contract. Is it
6 not?

7 R. Well, I think the Distributor is
8 responsible or I should say the entity
9 designating network resources is
10 responsible to apply those principles to
11 its designated resources. And they should
12 make an attestation, of course, as FERC
13 envisions.

14 Q.241 All right. Mr. Sinclair, I'll repeat my
15 question. You're suggesting that this
16 Régie endorse a principle, a requirement.
17 And on page 27, you say:

18 « The primary element
19 is to review the
20 nature on that penalty
21 provision and the
22 liquidated damage
23 provision. »

24 These are contractual provisions, right?
25 These are provisions in the contract, are

1 they not?

2 R. Yes.

3 Me ANDRÉ TURMEL :

4 Je vais m'objecter à la...

5 R. I don't see the term...

6 Q.242 Pardon, excusez-moi. Sorry, Dr. Sinclair.

7 Parce que maître Dunberry vient juste de
8 lire le passage et il a ajouté un mot qui ne s'y
9 trouve pas. Il a dit, à la page 27, lignes 8 et 9,
10 et je cite ce qui est écrit là:

11 « *The primary element*
12 *of this determination*
13 *is the nature of the*
14 *penalty.* »

15 Il a lu: « The primary element of this determination
16 is the review... » Alors, il ajoute.

17 Dr Sinclair parle bien du principe. Il
18 n'est pas dans le processus. Mon confrère tente de
19 l'amener dans ce qui n'est pas écrit, le processus,
20 et fait dire au texte ce qui n'est pas dit. Alors,
21 peut-être qu'il pourra retirer sa question et la
22 reformuler.

23 Me ÉRIC DUNBERRY :

24 Alors, Monsieur le Président, écoutez, je peux
25 toujours reformuler les questions pour simplement

1 éviter des débats inutiles, là, mais il me semble
2 que ces questions-là sont assez pertinentes et au
3 coeur de la proposition faite par monsieur Sinclair.
4 So, I will just rephrase the same question perhaps.

5 Q.243 Mr. Sinclair, you're asking this Régie to
6 endorse a requirement. You described this
7 requirement on page 27. You refer to FERC
8 Order and to certain passages of FERC
9 Order. You're suggesting that the
10 starting point, the primary element, to
11 use your word, of this determination
12 refers to the penalty and liquidated
13 damages provision. And you have,
14 according to your suggestion, the
15 objective of assessing whether these
16 penalties and liquidated damage provisions
17 make the buyer whole, indemnify the buyer
18 for the full replacement of the
19 interrupted power.

20 This is what you're asking this Régie
21 to endorse. So, I'm asking you...

22 R. Yes.

23 Q.244 I'm asking you, in order to carry this
24 process that you want this Régie to
25 endorse, is it not obvious that you need

1 to start by reviewing whoever is doing it
2 and we're not there yet. We will get to
3 where you want to go but I'm asking you in
4 terms of process, in order to assess
5 whether this contract can be validly
6 designated according to your suggestion,
7 you need to start by looking at the
8 penalty provisions and the liquidated
9 damage provisions. You need to start with
10 those provisions. Is that not a fact?

11 R. Yes. The parties to the contract would
12 have to look at that.

13 Q.245 Okay. And you start with these provisions
14 and then you ask yourself whether these
15 provisions, once they are interpreted
16 according to the relevant facts, make the
17 buyer whole or not?

18 R. Yes.

19 Q.246 Okay. And the concept of being made whole
20 is, what you're suggesting - is a full
21 cost of replacing interrupted power. This
22 is what you're suggesting. That is the
23 test that you would want this Régie to
24 adopt?

25 R. A requirement, yes.

1 Q.247 Okay. Now, you and I when we met last, we
2 had a little discussion about the fact
3 that this jurisdiction is a civil law
4 jurisdiction. You remember that little
5 discussion we had?

6 R. I do.
7 13H19

8 Q.248 Yes. Maybe you learned for the first
9 time, maybe you didn't but that Québec is
10 a civil law jurisdiction and that our laws
11 of contract - actually, we don't have laws
12 of contract, we have what we call a *régime*
13 *des obligations*, laws of obligations, and
14 it's governed by rules of civil law. You
15 remember that?

16 R. Yes.

17 Q.249 And you know that that has not changed
18 recently, we're still a civil law
19 jurisdiction?

20 R. Okay.

21 Q.250 And you know that in the United States,
22 except for one State perhaps, all the
23 other States are common law jurisdictions?

24 R. Yes.

25 Q.251 You know that. And you know that we have

1 an entire book in our Civil Code dealing
2 with penalties, liquidated damages,
3 liability and indemnification. You know
4 that? Or you don't but I suggest.

5 R. I believe you.

6 Q.252 Now, we have two different legal systems
7 basically, what I'm suggesting, when it
8 comes to indemnifications. Can you accept
9 that as a principle?

10 R. Okay, I believe you.

11 Q.253 Now, do you think it would be wise for the
12 Régie to endorse a principle that is
13 essentially driven by American law when it
14 comes to application and interpretation
15 while in Québec we have an entirely
16 different regime in terms of application
17 and interpretation of these concepts? Do
18 you think it would be wise for this Régie
19 to do that?

20 Me ANDRÉ TURMEL :

21 Objection à cette question-là. Je suivais mon
22 collègue jusqu'à quand même déterminer deux régimes
23 différents, mais là, on est vraiment en train de lui
24 demander une interprétation juridique de deux
25 régimes de droit comparés qui sont des disciplines

1 très particulières dans les facultés de droit. Et
2 de comparer un régime de 50 états plus la Louisiane
3 avec celui du Québec, les codes civils, je pense
4 qu'ils vont un peu loin.

5 Jusqu'à maintenant, je pense qu'il a
6 établi avec le témoin qu'il y avait certainement
7 deux systèmes, deux pays différents. Mais de
8 continuer dans les... à savoir où cela va nous
9 amener au niveau juridique quant à l'interprétation,
10 je m'objecte à cette ligne de questions parce
11 qu'elle ne nous mènera nulle part. Et le texte de
12 sa preuve au Dr Sinclair parle bien de ce qui se
13 passe aux États-Unis par le biais d'une
14 recommandation mais s'arrête là.

15 Maintenant, s'il y a des conséquences
16 juridiques que mon confrère entend soulever, il
17 pourra les plaider le cas échéant mais il ne pourra
18 pas aller bien, bien loin avec le docteur Sinclair
19 sur cette question. Alors, je m'objecte à cette
20 ligne de questions.

21 Me ÉRIC DUNBERRY :

22 Monsieur le Président, je ne demande pas au témoin
23 de comparer les règles de droit du Québec avec les
24 règles de droit américain. Ce que je lui demande
25 c'est s'il paraît raisonnable pour lui de

1 recommander à une Régie d'endosser au Québec, dans
2 un régime de droit civil, des principes développés
3 dans un état de droit commun, qu'on appelle le
4 *common law*, qui est essentiellement les Américains,
5 les États-Unis ont un régime de droit commun.

6 Je ne lui demande pas de faire une analyse
7 du droit comparatif. Je lui demande est-ce qu'il
8 lui paraît raisonnable de suggérer que vous
9 endossiez des principes basés sur des analyses de
10 contrats sur des questions de responsabilités qui
11 sont complètement différentes. C'est l'hypothèse
12 que je pourrai plaider, mais sur cette hypothèse-là,
13 et on peut poser des hypothèses lorsqu'on parle à un
14 expert, est-ce que ça lui paraît raisonnable de
15 faire cette recommandation-là? Je ne lui demande
16 pas de traiter des questions de droit comparé en
17 disant qu'est-ce qui est différent au Québec et aux
18 États-Unis sur, par exemple, la responsabilité pour
19 les dommages liquidés. Je ne lui demande pas de
20 traiter du fond de l'affaire.

21 Je veux juste savoir si c'est raisonnable
22 de faire cette suggestion-là, cet endossement-là, un
23 endossement ouvert, pour le passé, puis je vous le
24 soumets pour l'avenir, alors qu'il y a ces écarts
25 entre les deux juridictions. Et je pense qu'il peut

1 répondre à ça sans rentrer dans une analyse
2 juridique.

3 Me ANDRÉ TURMEL :

4 Monsieur le Président, mon confrère vient de tenter
5 de reformuler mais c'est toujours la même chose, ça
6 revient à lui demander son opinion cette fois-ci
7 juridique des deux systèmes et des différences et de
8 faire les nuances appropriées.

9 Cet aspect-là n'est pas abordé par
10 l'expert dans son témoignage écrit, à raison. Il
11 connaît certainement bien les limites de son mandat.
12 Il a simplement indiqué ce qui avait été fait aux
13 États-Unis. Il soumet que cette question pourrait
14 être prise en compte par la Régie de l'énergie,
15 point.

16 Maintenant, de lui demander les
17 conséquences juridiques... on lui dit: « Est-il
18 raisonnable de faire telle chose? » Bien, pour être
19 capable de faire une telle affirmation, on doit se
20 pencher un peu plus sur l'analyse juridique et les
21 conséquences juridiques.

22 Je vois bien là où va mon confrère et il
23 le fera en argumentation. Mais je pense qu'on ne
24 peut pas aller beaucoup plus loin là-dessus là.

25 LE PRÉSIDENT :

1 Un instant.

2 Alors, ici, la Régie, d'une part, cette
3 ligne de questions là qui porte sur les ordonnances
4 de la FERC jusqu'à aujourd'hui puis ce que ça
5 impliquerait d'endosser le principe pour le futur,
6 vous avez ramené un peu dans votre réplique cette
7 notion-là, je pense le témoin a bien précisé sa
8 position quant à ce qu'il propose et basé sur sa
9 lecture des ordonnances et il propose des
10 dispositions spécifiques. Et pour le futur, la
11 Régie a compris qu'il laisse à la Régie la
12 discrétion d'examiner des jurisprudences futures ou
13 des *policy making* futures de la FERC. Ça, c'est une
14 chose.

15 Maintenant, quant à la question supposée,
16 ici, la Régie va vous permettre peut-être de
17 demander au témoin s'il a considéré ces aspects de
18 différences là.

19 Quant à savoir s'il est raisonnable pour
20 un expert de faire des recommandations qui
21 impliquent des examens du régime juridique, on
22 pourra regarder tout ça en argumentation. Je pense
23 que tous les procureurs dans la salle ont les
24 connaissances nécessaires pour argumenter devant la
25 Régie sur un point comme cela. Donc, la Régie vous

1 invite à...

2 Me ÉRIC DUNBERRY :

3 Je vais reposer la question que vous suggérez,
4 Monsieur le Président, tout simplement.

5 Q.254 Mr. Sinclair, when you made that
6 recommendation - and I hope I will
7 translate well your question, Monsieur le
8 Régisseur Carrier, I will try - when you
9 made your recommendation to endorse FERC's
10 requirements by reference to what you call
11 these tests, which is to consider the
12 provisions, did you perform any analysis
13 or did you consider in any way the
14 differences between the Québec civil law
15 jurisdiction principles of liability and
16 indemnification with those principles
17 enforceable, like it says, I guess I would
18 use that word, enforceable in the United
19 States?

20 R. No. I assume that the concept would be
21 picked up by... if it was endorsed by the
22 Régie, the concept would be picked up by
23 the Régie's attorneys which would be
24 competent enough to translate those into
25 appropriate requirements under the Québec

1 law. This is just a principle, obviously.

2 Q.255 And you said you would leave the Régie to
3 adapt those principles to the Québec civil
4 law context?

5 R. Yes.

6 Q.256 I would like to show you one decision on
7 point that was rendered by this Régie not
8 so long ago, it was in 2002, D-2002-260,
9 where a similar question was actually
10 raised.

11 Me ANDRÉ TURMEL :

12 Est-ce qu'on peut la voir avant?

13 Me ÉRIC DUNBERRY :

14 Oui, oui. C'est D-2002-260.

15 Q.257 The question that was asked in this
16 case...

17 Je vais attendre la distribution.

18 The question that was asked in this
19 case was whether the Régie should adopt
20 norms, the word that was used in French
21 was *normes*, the U.S. norms or American
22 norms with respect to section 4 of the
23 Tariff. So, on page 20 of that decision
24 that was rendered at the time by *les*
25 *Régisseurs* Lambert, Vallière et Hardy, and

1 on page 20, Mr. Sinclair, you will find
2 the following comment. It's the last two
3 paragraphs of that page and I will read
4 slowly again so you can get the
5 translation as we read:

6 « Sur la question de
7 l'effet d'une décision
8 de la FERC sur le
9 Règlement 659, ... »

10 A l'époque là.

11 « ... la Régie
12 souligne que le renvoi
13 à l'article 4 du
14 Règlement 659 aux
15 dispositions du OATT
16 de la FERC ne saurait
17 faire de cette
18 disposition
19 réglementaire un
20 renvoi « ouvert » aux
21 normes américaines en
22 la matière, c'est-à-
23 dire que tout
24 amendement aux normes
25 américaines est

1 *automatiquement*
2 *incorporé au Règlement*
3 *659.*
4 *La Régie doit*
5 *considérer que le*
6 *gouvernement du Québec*
7 *a adopté le Règlement*
8 *659 en 1997. En mai*
9 *1998, le même*
10 *gouvernement mettait*
11 *en vigueur les*
12 *dispositions de la Loi*
13 *donnant une compétence*
14 *exclusive à la Régie*
15 *de fixer les tarifs et*
16 *conditions de*
17 *transport*
18 *d'électricité. En*
19 *conséquence, il est*
20 *difficile d'inférer*
21 *que le gouvernement*
22 *voulait, en même*
23 *temps, donner une*
24 *compétence exclusive à*
25 *la Régie de fixer les*

1 *tarifs et conditions*
2 *de transport*
3 *d'électricité et lui*
4 *permettre de déléguer*
5 *une partie de cette*
6 *compétence à un autre*
7 *organisme de*
8 *régulation, la FERC. »*

9 So, first of all, I will ask you whether
10 you agree with this general notion that
11 this Régie will not and is well-founded in
12 not delegating its competence by adopting
13 in advance norms that could be issued by
14 FERC?

15 Me ANDRÉ TURMEL :

16 Peut-être là-dessus, Monsieur le Président, si vous
17 me permettez, on est prêt de la... parce
18 qu'évidemment...

19 LE PRÉSIDENT :

20 Est-ce que vous en faites une objection?

21 Me ANDRÉ TURMEL :

22 Oui, une objection à la question telle que formulée.

23 LE PRÉSIDENT :

24 Allez-y.

25 Me ANDRÉ TURMEL :

1 Mon confrère présente, lit le passage et en tire une
2 interprétation étroite, parce que je sais très bien
3 que d'autres décisions ont été rendues depuis ce
4 temps-là qu'il ne dépose pas ici, notamment dans le
5 cas des plaintes de NLH à des décisions
6 interlocutoires où on a revu également cette
7 question-là à l'égard de l'article 4. Et donc, il
8 présente son interprétation et il lui demande
9 d'adopter son interprétation.

10 Alors, s'il veut lire le passage tel qu'il
11 est et lui demander quels sont ses commentaires, ça
12 va. Mais s'il dit, comme il vient de faire, que
13 c'est maintenant... comment dire... la règle de
14 droit, et en conséquence, qu'il doit vivre avec
15 cela, est-ce que ça change? Il y a une différence
16 là.

17 Alors, qu'il lui demande ce qu'il pense de
18 ce passage-là, comme ça il ne qualifie pas, il ne
19 fait pas d'interprétation, d'accord. Mais qu'il
20 aille dans les... en disant, en affirmant haut et
21 fort que ceci vient dire... veut ceci ou cela, c'est
22 autre chose.

23 Me ÉRIC DUNBERRY :

24 Monsieur le Président, je pensais avoir fait cela,
25 alors je reviendrai à ceci.

- 1 Q.258 Mr. FERC... Mr. FERC! Mr. Sinclair, do
2 you agree with that statement, that
3 finding made by the Régie in that
4 decision, do you agree with what I just
5 read?
- 6 R. What I agree with is that the Régie should
7 not be bound by anything from FERC.
8 That's what that says and I agree, yes.
- 9 Q.259 So, when you say that this Régie should
10 endorse, the word « endorse » doesn't mean
11 that the Régie should be bound by FERC or
12 FERC's requirements on designation of PPA?
- 13 R. That's correct.
- 14 Q.260 Now, and that endorsement would be a
15 general declaration in the decision to be
16 rendered, right?
- 17 R. Yes, I would recommend a statement saying
18 that « We also recognize liquidated
19 damages provisions... », however I word it
20 there.
- 21 Q.261 And that general statement would not be
22 connected to any specific factual
23 analysis, it wouldn't be connected to any
24 specific circumstances, it wouldn't be
25 connected to any special facts. You're

1 asking this Régie to put somewhere in the
2 decision « And by the way, we generally
3 endorse FERC's requirements on the
4 designation of contracts. » You want a
5 general statement, a declaration by this
6 Régie outside any contextual or
7 circumstantial framework?

8 R. Well, I certainly invite the Régie to
9 treat my report as a fact, a factual
10 basis.

11 Q.262 Yes, I know, but you're not asking this
12 Régie to make a declaration in relation to
13 one PPA. You're basically asking the
14 Régie to generally endorse for the future
15 that whatever the circumstances are, this
16 will be the rule applicable subject to I
17 guess... I guess I don't know what, I
18 don't see any conditions in your
19 suggestion.

20 R. Well, I think the Régie would declare that
21 designated resources should have, if they
22 are related to a Purchase Power Agreement,
23 should have provisions that have certain
24 stipulations regarding their interruption,
25 as I set out here.

1 Q.263 Am I right in saying that in the complaint
2 proceeding by NLH, the Churchill Falls
3 complaint, you advanced the same position
4 in the context of your report, is that not
5 a fact?

6 R. That's correct.

7 Q.264 Yes. So, basically, you're advancing in
8 this rate case the same position that you
9 advanced on behalf of your client in the
10 context of the agreement, the PPA they
11 were submitting, right? It's the same
12 argument that you're advancing in this
13 rate case that you advanced in the
14 complaint?

15 R. That's correct.

16 Q.265 And again, you read both decisions that
17 were rendered on this, did you not?

18 R. Yes.

19 13H34

20 Q.266 Okay.

21 R. With respect to that, it occurs to me that
22 the complaint case was based on the prior
23 out, the prior tariff and really now I'm
24 talking about the future tariff which is
25 the one at 890.

1 Q.267 Yes. You want your theory to apply in the
2 future and that theory was a theory you
3 advanced on behalf of your client in their
4 complaints. Right?

5 R. Well, I wouldn't call it my theory. I
6 would call it FERC's theory but I advanced
7 it.

8 Q.268 Yes, but it was not retained by the Régie,
9 right?

10 R. I don't think it was.

11 Q.269 Yes, I think you're right. You said you
12 reviewed both decisions by the Régie in
13 the complaint process. Were you provided
14 with a copy of both decisions?

15 R. Yes.

16 Q.270 Were they translated decisions?

17 R. Yes.

18 Q.271 When did you review these decisions?

19 Me ANDRÉ TURMEL :

20 Monsieur le Président, je m'objecte, là. Je pense
21 que c'était correct de lui poser la question. Mais,
22 là, si on commence avec ce type de questions là, on
23 va embarquer dans l'ensemble des décisions. Je
24 pense qu'il est clair depuis le début que ces deux
25 dossiers-là sont des dossiers pour le tarif actuel

1 ou celui qui existait à l'époque des plaintes. On
2 est dans 890.

3 Qu'on y fasse référence de temps à autre
4 au niveau... de temps à autre au niveau purement
5 factuel pour illustrer un point comme on vient de le
6 faire, là, sa position, on l'a laissé aller mais
7 quand il l'a lue, pourquoi il l'a lue? Là, est-ce
8 qu'on va recommencer la même jérémiade d'engagements
9 pour savoir qui l'a traduit, quand ça a été traduit?

10 Écoutez, je ne sais pas où s'en va mon
11 collègue mais ça m'apparaît totalement non
12 pertinent. Ça va bien, là, et woops, cette
13 question-là m'apparaît un peu échappée du lot, là.
14 Alors, je m'objecterais à ces questions-là. Elle ne
15 sont pas pertinentes aux fins du débat ici.

16 Me ÉRIC DUNBERRY :

17 Alors, je vais répondre uniquement à la partie que
18 je qualifierais polie du commentaire de mon collègue
19 avec ses références à des jérémiades et avec des
20 histoires échappées du lot, là. Je ne répondrai pas
21 à ses commentaires qui ne sont pas nécessairement
22 très utiles.

23 Ce que je dirais c'est ceci, le témoin a
24 dit qu'il avait lu ces décisions-là. Son témoignage
25 a évolué au cours des derniers jours et je voulais

1 savoir s'il les avait lues, oui. Si oui, quand? Et
2 s'il avait eu des versions traduites pour être en
3 mesure de m'assurer, là, qu'il soit au courant des
4 faits les plus récents concernant la proposition
5 qu'il propose devant la Régie aujourd'hui qui est la
6 même que celle qu'il proposait à la Régie dans une
7 autre instance.

8 Alors, je ne vois pas là des jérémiades,
9 Monsieur le Président. Le dossier Churchill est
10 allégué directement dans le rapport d'expert de
11 monsieur Sinclair et je lui ai demandé simplement
12 s'il avait pris connaissance de ces décisions-là en
13 réponse à des questions... à plusieurs reprises il
14 a lui-même référé d'ailleurs au dossier du Labrador.
15 Alors, quand a-t-il pris connaissance de ces
16 décisions, je pense que c'est pertinent, Monsieur le
17 Président.

18 LE PRÉSIDENT :

19 Alors, la Régie... est-ce que vous avez quelque
20 chose à ajouter?

21 Me ANDRÉ TURMEL :

22 Je veux simplement dire, si les questions s'arrêtent
23 là quand et s'il en a pris connaissance, je veux
24 bien. Je veux m'assurer qu'on n'embarque pas dans
25 un autre lot mais si ça s'arrête là, je peux bien,

1 je pense, factuellement, là.

2 Mais autrement, on sait bien, si on met le
3 bras dans la porte, le pied dans la porte, on ouvre
4 autre chose et, tout au long de cette audience,
5 Monsieur le Président, vous avez bien indiqué que
6 dans ce dossier-ci nous regardons vers l'avant pour
7 des nouvelles normes à être fixées et, là, de
8 recommencer à refaire une partie du procès à ce
9 stade-ci m'apparaît inutile.

10 Mais à l'égard de ces deux questions-là...
11 si mon confrère me dit bien que ce ne sont que ces
12 deux questions-là, je ne sais pas qu'est-ce qu'il...

13 LE PRÉSIDENT :

14 Écoutez...

15 Me ÉRIC DUNBERRY :

16 Je n'ai pas à négocier avec mon collègue non plus,
17 Monsieur le Président.

18 Me ANDRÉ TURMEL :

19 Bien, je lui pose la question.

20 LE PRÉSIDENT :

21 La Régie a entendu votre objection et la Régie
22 permet les questions qui ont été posées qui visent
23 à valider sur quelle base le témoin émet son opinion
24 à la Régie quant à la lecture des décisions sur les
25 plaintes.

1 Donc, la Régie accepte ces questions-là et
2 invite évidemment que tous les propos tenus dans la
3 présente salle soient respectueux de toutes les
4 parties et de toutes les personnes présentes et ça
5 vaut pour tout le monde.

6 Vous pouvez continuer.

7 Me ÉRIC DUNBERRY :

8 Merci, Monsieur le Président. Merci.

9 Q.272 Mr. Sinclair, you heard the question?

10 R. Yes. It was very shortly after the
11 decision was released that I saw a
12 translated copy, probably three days after
13 their decision was released.

14 Q.273 The second decision. You know, there was
15 a first decision, then there was a review
16 process and there was a second decision.
17 Have you reviewed the second decision?

18 R. The first decision was... the second
19 decision was...

20 Q.274 The second decision was rendered in March,
21 I believe, March the 6th, 2011.

22 R. Yes, I read that too.

23 Q.275 Okay.

24 R. Shortly thereafter.

25 Q.276 I'd like to spend some time, and these are

1 the last questions I have for you, back
2 into your presentation of yesterday or the
3 day before, a couple of quick questions on
4 your actual presentation, PowerPoint
5 presentation.

6 The pages are not all numbered but
7 page 28, plus or minus two, there is...
8 actually, it is page 28, it's right after
9 27, so, there is a...

10 R. Yes.

11 Q.277 You recognize that.

12 R. I can put it up, if you want.

13 Q.278 I don't have... well, one question. Maybe
14 it won't be that necessary.

15 R. Okay.

16 Q.279 You have two scenarios, case 1 and case 2
17 on page 28.

18 R. Yes.

19 Q.280 One is the designation of the purchase as
20 you call it of 300 megawatts and case 2 at
21 the bottom is a designation of the entire
22 generator.

23 R. Yes.

24 Q.281 Could there be a case 3 where instead of
25 being the entire generator, it would be a

1 part of that generator? In other words,
2 you and I can agree, I assume, that it
3 could be a partial designation? The
4 tariff allows for a partial generation of
5 plants?

6 R. I think case 1 would be a partial
7 designation, 300 megawatts at the 500
8 megawatt plant.

9 Q.282 Okay. But that was case 1. You have case
10 2. I'd like to suggest to you that there
11 could be a case 3. And the case 3 would
12 be the designation of a part of the plant
13 as opposed to a designation of the entire
14 plant. Do you know whether the tariff
15 allows for a partial designation of a
16 plant?

17 R. I don't see how that's distinguished from
18 case 1.

19 Q.283 Well, I'm asking you, case 1 is... I
20 understood that the designation in case 1
21 was, according to your usual theory, was
22 the contract.

23 R. The contract from that plant, yes.

24 Q.284 Yes. Now...

25 R. Part of that plant.

1 Q.285 ... case 2 is a designation of the plant.
2 Is it not?

3 R. Yes.

4 Q.286 And you underline entire plant.

5 R. Yes.

6 Q.287 To make the point that the ATC was not
7 down to zero.

8 R. Yes.

9 Q.288 Now, I'm suggesting that there could be a
10 case 3 under our tariff and that case 3
11 would be designation of a part of the
12 plant and that would be a case 3, a
13 designation of a part of the plant.

14 R. Okay. So, I would... that is what I
15 envisioned in case 1.

16 Q.289 Okay. But again case 1 is your usual
17 approach that you designate the contract,
18 the PPA. Case 2 is the fact that it is
19 possible to designate a plant. We all
20 know that plants have been designated in
21 this province and you use the word
22 « entire » generator.

23 I'm suggesting to you that under the
24 tariff, as it is now and as it would
25 remain in the future, it is possible,

1 conceptually possible, to designate a part
2 of a plant.

3 R. Yes, for sure but I can't imagine
4 designating part of a plant without some
5 kind of a contract, it specifying what
6 part of the plant. So, that would be the
7 same as case 1, some purchase power
8 agreement.

9 Q.290 So, are you saying that under our tariff,
10 it is not possible to designate a part of
11 a plant?

12 R. No, I'm not saying that but I'm saying
13 when you do that, there has got to be some
14 kind of contractual terms that would
15 delineate that part of the plant as
16 designated. So, it would be a PPA.

17 Q.291 So, you think case 3 is not possible under
18 the tariff without the partial designation
19 of the PPA at the same time, that's what
20 you're suggesting?

21 R. Your hypothetical case 3?

22 Q.292 Yes.

23 R. I would think there would be some kind of
24 contract either explicit PPA or some
25 implicit agreement that part of this plant

1 is designated, part of it is not and that
2 would be the case 1 here.

3 Q.293 Alright. I'm not sure I understood the
4 distinction but that's your answer.

5 On page 32 of that presentation,
6 there is this issue of ownership. You
7 have a number of slides on ownership.
8 There is one here on page 32, I believe,
9 and then, if you continue, I believe there
10 is a general conclusion on page 37 which
11 is called conclusion on the statement, the
12 attestation.

13 R. Yes, okay.

14 Q.294 And on the ownership issue, you're
15 suggesting that there will be an
16 attestation, a statement or a declaration,
17 I don't know if the word « attestation »
18 is the right word. I thought the word was
19 « statement » in FERC Order but in French
20 it is *attestation*.

21 R. It's attestation in FERC too.

22 Q.295 Okay.

23 R. I think they might use statement at some
24 points too.

25 Q.296 Okay. So, let's use attestation. You're

1 suggesting that there'll be an attestation
2 of the ownership of a resource before it
3 could be validly designated.

4 R. Yes.

5 Q.297 Okay. So, to attest of ownership, I guess
6 you're under... are you under the
7 impression that ownership is a condition
8 for designation of a resource under Part
9 IV?

10 R. No, either ownership or entitlement to a
11 contract.

12 Q.298 So, ownership is not a requirement to
13 designate, validly designate a plant in
14 Québec. You understand that?

15 R. Oh! yes, that's correct.

16 Q.299 Okay. So, you're not only asking for an
17 attestation, you're asking for this Régie
18 to modify the OATT to make ownership a
19 condition for a valid designation. Are
20 you not at the same time?

21 R. No, I just said that that's not the case,
22 that either ownership or commitment to
23 purchase under a valid contract. So, the
24 designator either has to own it or have a
25 valid contract to the capacity.

1 Q.300 Okay. But you're aware of the fact that
2 Hydro-Québec Distribution does not own any
3 plant. You know that?

4 R. Oh! yes and that's the entire reason for
5 this conclusion here that HQ itself should
6 attest because if you look at two slides
7 prior, I explained how the Heritage Pool
8 obscures the designation process. And so
9 because, as Mr. Clermont had discussed,
10 because HQT does not own the vast bulk of
11 the resources or have a contract with the
12 resources themselves, because of the
13 Heritage Pool, HQD is not in a position to
14 make an attestation regarding ownership.

15 So, in order to accomplish the
16 important policy of Order 890, to make
17 someone accountable for accurate
18 designations, it's necessary in this case,
19 in the case of Québec, to have HQ actually
20 do the attestation.

21 Q.301 Okay. So, I thought yesterday, when you
22 corrected yourself, because you came back
23 after a pause at one point and you say:
24 I didn't mean HQT, I meant HQ, Hydro-
25 Québec.

- 1 R. That's correct.
- 2 Q.302 The integrated entity. So, you want
3 Hydro-Québec to sign the attestation,
4 Hydro-Québec, not a division of Hydro-
5 Québec but Hydro-Québec itself?
- 6 R. Yes, that's the only way it seems that
7 this attestation wouldn't have any of the
8 effects that are intended in Order 890 and
9 that is to make somebody stand up and say:
10 Yes, we have contract rights to this
11 designated resource or yes we own this
12 designated resource.
- 13 Q.303 So, should we...
- 14 R. And that way...
- 15 Q.304 Go ahead, sorry.
- 16 R. That way, when the transmission provider
17 gets the information, it has some
18 confidence that it's accurate.
- 19 Q.305 So, should we amend the entire Section 4?
20 You know, Part IV refers to distributor's
21 resources. The entire chapter 4 refers to
22 distributor's resources. Should we now
23 change all this to call it Hydro-Québec's
24 resources?
- 25 R. No, I think this attestation, just as it's

1 written right there, can go in HQT
2 proposed OATT at 37.1 where you have
3 deleted the attestation for the
4 distributor.

5 Q.306 But the entity designating resources and
6 the entity suppressing resources is Hydro-
7 Québec Distribution. It's a distributor,
8 right?

9 13H50

10 R. Well, not really because, as you saw
11 yesterday, there's some confidentiality
12 claims with respect to who really... what
13 the capacity of these resources really
14 are. And so, HQT is receiving
15 designations in calculating ATC but it's
16 not really HQD that is in a position to
17 verify whether these designations are
18 accurate or not.

19 Q.307 So, I'm just trying to follow what you're
20 suggesting here because it may sound to
21 you like a small thing but I think it may
22 not be. When you're suggesting that
23 Hydro-Québec does the actual attestation,
24 you're basically suggesting that it's
25 Hydro-Québec that does the designation and

1 it's Hydro-Québec that does the actual
2 suppression of designation. In fact,
3 what's what you're saying?

4 R. Hydro-Québec, HQP in particular, has the
5 information on Purchase Power Agreements
6 and designation resources. They don't
7 really give it to HQD. HQD doesn't have
8 direct access to that information; they
9 have to get it from HQP I suppose.

10 Q.308 Yes. But, Mr. Sinclair, I'm sure you read
11 our Part IV but when you read Part IV, it
12 refers specifically to Hydro-Québec
13 Distribution, it's called a distributor.
14 The entire section, the entire Part IV
15 adopted by the Régie for many years now
16 has made it clear that the designation of
17 resources is actually an act performed by
18 the distributor.

19 Information may come from somewhere
20 else as part of the process of gathering
21 information but the actual designation,
22 Part IV governs the supply of the native
23 load. We agree on that at least?

24 R. Yes, well, if you...

25 Q.309 But let me ask the question. Part IV

1 governs the supply of the native load,
2 right?
3 R. Yes.
4 Q.310 We agree?
5 R. Yes.
6 Q.311 Part IV is also, as we saw this morning,
7 actually what we saw earlier as well, is
8 that the mandate to supply the native load
9 is the distributor's mandate, right? You
10 agree with that?
11 R. Yes.
12 Q.312 And you and I, we can do this but you will
13 find the *mot* « distributor » all over Part
14 IV, right?
15 R. Of course.
16 Q.313 Now, what you're suggesting is that Hydro-
17 Québec, as opposed to the distributor,
18 should sign the attestation. Should we
19 forget and abandon the functional
20 separation?
21 R. Well, first of all, HQD is defined as
22 Hydro-Québec in carrying out distribution
23 functions, you're making that distinction
24 quite strong it appears to me. So really,
25 when HQD does anything, it really is HQ

1 doing it.

2 Q.314 So, that's why I'm saying you're
3 suggesting we do not consider the
4 functional separation?

5 R. Well, because the functional separation
6 isn't completed, you have a gap here where
7 nobody can take responsibility for the
8 designations.

9 Q.315 Who said that nobody takes responsibility?
10 That's your view? Who said that? Have
11 you ever heard a decision by the Régie who
12 says that distribution does not take
13 responsibility for something? Could you
14 give us any factual basis for that?

15 R. Well, I think... well, yes. If you
16 have... so, in the Tariff, you have HQT
17 has to provide HQ TransÉnergie with
18 designations, so HQT can make ATC
19 calculations primarily. But HQD doesn't
20 have the information on the plants, on the
21 PPAs, we've heard this. So, there has to
22 be a transfer within the company but
23 nobody seems to be able to... HQD is
24 admittedly, or it's been stated in this
25 hearing, that HQD cannot make an

1 attestation regarding ownership.

2 Q.316 Because they don't own anything, it's not
3 because they can't, it's because they
4 don't own it, that's all.

5 R. Right. So, you've got to get to a level
6 where somebody can make an attestation as
7 to the accuracy of these resources and the
8 only entity in that position is HQ,
9 perhaps HQP.

10 Q.317 But, Mr. Sinclair, ownership has never
11 been a criteria. I mean, ownership is a
12 criteria in the United States. We are not
13 in the United States, you know that, we're
14 in Québec.

15 R. Oh yes and the Régie can decide but I'm
16 just saying that the *pro forma* OATT...

17 Q.318 Yes. Ownership... let me finish my
18 question... ownership...

19 Me ANDRÉ TURMEL :

20 Un instant, O.K. là, si on peut laisser le témoin
21 répondre. Je pense qu'il essaie de répondre et vous
22 l'interrompez.

23 Q.319 Sir, if you want to answer the question,
24 take your time.

25 R. Yes. I think your question was ownership

1 is not a requirement in Québec. The Régie
2 may very well find that. My statement
3 here is if HQT wants to have a Tariff
4 that's in conformance with 890, I would
5 recommend that there be an attestation
6 that corresponds to the attestation
7 requirements in Order 890. And that's
8 what that part of my testimony is about.

9 Me ÉRIC DUNBERRY :

10 Q.320 So, what you're suggesting is not just
11 that the attestation be prepared and
12 signed by Hydro-Québec, what you're
13 suggesting is that section 37, section 38
14 be amended to include an ownership
15 condition. That's not in your report by
16 the way but that's what you're saying
17 today, right?

18 R. Well, the distributor resource, the
19 designated resource, should either be
20 owned or there should be a contract
21 entitling the HQ to that power, yes.

22 Q.321 Now, when the current Tariff was adopted
23 in 2001-2002, the ownership issue was
24 already in FERC's *pro forma*, was it not?

25 R. This ownership or commitment to purchase?

- 1 Q.322 The ownership, what you call the ownership
2 condition was in FERC's *pro forma* back in
3 2001? In Order 888, was there not an
4 ownership issue?
- 5 R. Yes, I believe there was.
- 6 Q.323 Yes. Now, when the Régie adopted Part IV,
7 it specifically removed that condition in
8 2001, you agree with that, that there's no
9 ownership condition in our OATT?
- 10 R. Actually, I don't know but I'll take your
11 word for it.
- 12 Q.324 Yes. So, today you're asking for the
13 attestation of something which is not a
14 condition. So, by way of the attestation
15 that FERC is now insisting to obtain in
16 the United States, you're not seeking an
17 attestation, just seeing by the back door
18 to include something which has never been
19 there. An ownership condition. There's
20 no ownership condition, there's never been
21 an ownership condition.
- 22 R. Okay, well, let me answer your question.
23 Whether I am trying to impose something
24 that's not in there, I just can't imagine
25 that HQ has access to designated resources

1 that either are not owned or in which they
2 don't have a contract. So, I mean if
3 there is some other resource that does not
4 fit in one of those two categories, then,
5 I do think the Régie should address that.

6 Q.325 And Hydro-Québec should now become part
7 without functional separation of the
8 designation and suppression processes as
9 opposed to its distribution division?

10 R. No, just for the attestation.

11 Q.326 So, one last question, am I to understand
12 that the attestation would come from
13 Hydro-Québec but that the designation
14 would be made by Hydro-Québec
15 Distribution? In other words, the
16 distributor would make the designation but
17 the attestation would come from somewhere
18 within the company?

19 R. I think if there is going to be a resource
20 designated, there has to be an attestation
21 within the company.

22 Q.327 But that would not come from the
23 distributor, it would come from somewhere
24 else?

25 R. Whoever knows it. But I don't think the

1 distributor knows it right now what are
2 the designated resources. Or at least
3 does not know the nature of them.

4 Q.328 I don't think there's anything more we can
5 ask you on this. Maybe one last question.
6 Do you believe in functional separation as
7 a concept?

8 R. Yes.

9 Q.329 All right.

10 Me ÉRIC DUNBERRY :

11 Monsieur le Président, je pense que nous n'avons pas
12 d'autres questions pour le témoin sur ce thème. Je
13 vais laisser ma consœur poursuivre le contre-
14 interrogatoire. Merci.

15 LE PRÉSIDENT :

16 Très bien. Juste avant de commencer, pour faire le
17 point pour ce qu'il reste d'interrogatoire pour le
18 témoin, est-ce qu'on a une indication?

19 Me MARIE-CHRISTINE HIVON :

20 Monsieur le Président, j'en aurai pour probablement
21 autour de deux heures de contre-interrogatoire alors
22 on pourra en faire une partie cet après-midi puis
23 conclure vraisemblablement à l'intérieur de l'avant-
24 midi de demain là. Je n'ai pas vraiment de doute...

25 LE PRÉSIDENT :

1 C'est ça, donc...

2 Me MARIE-CHRISTINE HIVON :

3 ... à moins que...

4 LE PRÉSIDENT :

5 La Régie confirme là que nous allons ajourner à
6 3 h 00 puis reprendre à ce moment-là demain matin à
7 9 h 00.

8 Me MARIE-CHRISTINE HIVON :

9 D'accord. Juste le temps de...

10 LE PRÉSIDENT :

11 Et peut-être juste aussi avant de commencer, on
12 m'indique de bien s'assurer de parler vis-à-vis le
13 micro. Certaines fois ce matin, c'était difficile
14 dans la salle d'entendre les propos via les micros.

15 Me MARIE-CHRISTINE HIVON :

16 Je vais m'efforcer de ne pas trop me promener,
17 Monsieur le Président.

18 LE PRÉSIDENT :

19 Merci.

20 CONTRE-INTERROGÉS PAR Me MARIE-CHRISTINE HIVON :

21 Q.330 Mr. Sinclair, good afternoon.

22 R. Good afternoon.

23 Q.331 I would like to refer you to responses to
24 Requests for Information received by
25 Hydro-Québec TransÉnergie at question 2.1.

1 R. Is this an HQT exhibit?

2 Q.332 It's an answer from NLH and yourself to
3 our Request for Information, so I presume
4 it's an NLH... No, the answers received
5 from Mr. Sinclair to HQT's information
6 request.

7 LE PRÉSIDENT :

8 Et la date est le 13 octobre 2010?

9 Me MARIE-CHRISTINE HIVON :

10 Du 13 octobre.

11 LE PRÉSIDENT :

12 Ce qui serait C-13.28, je crois.

13 Me MARIE-CHRISTINE HIVON :

14 Merci, Monsieur le Président.

15 R. I'm not that organized, so no, I don't
16 have it in front of me.

17 Q.333 C-13.28.

18 R. Okay, sorry. Okay, I do have it now on
19 this computer.

20 Q.334 So, I'm at questions 2.1 and 2.2.
21 Question 2.1:

22 « Have your services
23 ever been enlisted in
24 the planning of the
25 transmission

1 *facilities represented*
2 *in Appendix K of the*
3 *OATT's FERC pro*
4 *forma? »*

5 And I'm reading the translation that
6 presumably has been provided to you. And
7 your response was:

8 « Yes, I have been
9 enlisted in projects
10 that include planning
11 processes for entities
12 that have adopted
13 FERC's Appendix K.
14 This included
15 assignments where we
16 were specifically
17 required by FERC to
18 monitor transmission
19 planning processes. »

20 And you refer to your response at 1.1.
21 And the question at 2.2 was:

22 « If so, provide a
23 list of these mandates
24 and their purpose. »

25 And here we have a list of four mandates.

1 You see that?

2 R. I'm sorry, I still don't seem to find it.

3 Four mandates, okay. Are you saying that

4 the first one is availability of

5 transmission capacity?

6 Q.335 The first one is independent monitor for

7 the summer 2009 Entergy request.

8 R. Sorry, I still don't have the...

9 Q.336 The answer to 2.2.

10 R. 2.2. Okay, now, I have it, yes. So, the

11 answer to 2.2 then is yes, I've been

12 enlisted, *et cetera*, right?

13 Q.337 Yes, that's the response to 2.1. And 2.2:

14 « *Provide a list of*

15 *these mandates.* »

16 And here we have a list under « *Response* »

17 and we have four mandates that we can see

18 there. I understand that in these four

19 instances you worked on projects for

20 entities having adopted an Appendix K, is

21 that what I understand?

22 R. Yes.

23 Q.338 So, we talk about Louisiana Public Service

24 Commission, SPP Entergy, Arizona Public

25 Service Company and Public Service Company

1 of New Mexico.

2 R. Yes.

3 Q.339 Do we agree that all of these entities are

4 public utilities located in the United

5 States?

6 R. Yes.

7 Q.340 And they're all under FERC's jurisdiction?

8 R. That's correct.

9 Q.341 As a general question, are these mandates

10 that you personally performed or is it

11 Potomac or people in your staff?

12 R. These are cases that I was particularly

13 involved in.

14 Q.342 That you were particularly involved in?

15 R. Yes, I mean to a significant degree. I

16 wasn't necessarily alone but I would have

17 known all the issues in these cases.

18 Q.343 I will refer you to the second one, SPP

19 Entergy. You mention:

20 « SPP requested... »

21 And I read your explanation here at 2.2.

22 « SPP requested

23 examination of market

24 power issues

25 associated with

1 *Entergy joining SPP. »*

2 And you attached to this request for
3 information, your answer, you attached
4 copy of a report.

5 R. Okay.

6 Q.344 You remember that document?

7 R. Yes.

8 Q.345 I'm showing it to you.

9 R. I remember.

10 14H06

11 Q.346 So, it's a document that is joined to the
12 response to NLH, response of NLH to the
13 Request for Information. And we see on
14 the first page that it's a report that
15 seems to be prepared by David Patton from
16 Potomac Economics. It's not your name on
17 the report.

18 R. That's right.

19 Q.347 You have personally worked on that
20 mandate?

21 R. Yes, often times, we'll work in reports
22 together but we have to identify just a
23 single expert. On this particular one
24 that David was recognized.

25 Q.348 So, in this one it's not you but have you

1 drafted this report?

2 R. Yes.

3 Q.349 You did, okay. And am I right to
4 understand that this report does not *per*
5 se refer to the content of an Appendix K
6 or its sufficiency or compliance with FERC
7 Order 890?

8 R. Right. It wasn't that case where we were
9 asked to evaluate Attachment K issues but
10 it involved a utility that had already
11 adopted the Attachment K and there were
12 planning issues involved with that case.

13 Q.350 Okay. But this was a market power study.
14 So, you were - and if I look at the
15 beginning of the document when you present
16 an introduction and summary of the
17 document at page 4 - it's mentioned:

18 « *Potomac has been*
19 *engaged to perform an*
20 *evaluation of market*
21 *power related to*
22 *Entergy Texas joining*
23 *the Southwest Power*
24 *Pool and to identify*
25 *mitigation options*

1 *that would address any*
2 *market power issues*
3 *found. »*

4 You were not here discussing the content
5 of an Appendix K *per se*, right?

6 R. No, I didn't interpret the question. The
7 question was... okay, so, the question
8 was: Have we been enlisted in planning of
9 facilities in Appendix K of the OATT?
10 Okay, so this case involved close work
11 with the planning department of SPP.

12 So, we were familiar with the
13 processes that they adopted, the
14 collaborative process that they had in
15 place for planning. And so that's why I
16 thought it was relevant to the IR.

17 Q.351 Okay. I refer to the third item and this
18 answer 2.2. referring to quarterly reports
19 for the Arizona Public Service. So, I'm
20 at point 3. I understand that Potomac
21 prepares quarterly market monitoring
22 reports for the Arizona Public Service
23 Company. Right?

24 R. We no longer do but we did at the time and
25 we had for a long time.

1 Q.352 So, at the time you answered that in
2 October 2010 you did but...
3 R. Yes.
4 Q.353 ... not anymore?
5 R. Right.
6 Q.354 Okay. And as a general question, and I'm
7 referring to your memory here, Mr.
8 Sinclair, I have looked at a sample of
9 these reports and I didn't see that they
10 specifically addressed Arizona's Appendix
11 K *per se* or its sufficiency or compliance
12 with regard to FERC Order 890 neither?
13 R. That's right. You won't find it in the
14 reports but, in the process of monitoring
15 their system, they did consult us a couple
16 of times in their implementation of their
17 Attachment K or the implementation of
18 their 890 planning process.
19 Q.355 There is no report or document regarding
20 these additional mandates?
21 R. No, we weren't required to write a report
22 although we started monitoring certain
23 aspects of their system as a result of the
24 new Attachment K principles, for instance,
25 and we had a meeting with Arizona about

1 adopting the release of capacity to the
2 market in conformance with Order 890 and
3 we thought it prudent to start monitoring
4 some of the results of that process. So,
5 that would have been something related to
6 Attachment K.

7 Q.356 But this is not in the quarterly report
8 that you mentioned?

9 R. It wouldn't have been in any of the
10 quarterly reports.

11 Q.357 And am I right to understand that when you
12 do these market monitorings or when you
13 did for Arizona, one of the main concern
14 in your monitoring activities is
15 transmission congestion.

16 R. Yes.

17 Q.358 And that...

18 R. Just one more thing, and this will apply
19 to number 4 too is that in our mandate for
20 these cases, the FERC approved mandate for
21 the monitoring is that we look at the
22 planning process to make sure that it's
23 non-discriminatory.

24 Q.359 Yes. But I was referring to transmission
25 congestion here and that it's one of the

1 main concerns of your monitoring
2 activities?

3 R. Yes, in a quarterly reporting, right?

4 Q.360 And am I also right to understand that
5 from these reports for Arizona, that you
6 would agree that when transmission
7 congestion occurs, it is important to
8 analyze its causes and impacts to ensure
9 that it is not the result of anti-
10 competitive conduct.

11 R. Yes.

12 Q.361 Is that what you were referring to?

13 R. That's what we do, right.

14 Q.362 Okay. And that would be in the reports,
15 the quarterly reports?

16 R. Yes.

17 Q.363 I refer you now to the fourth item with
18 respect to New Mexico. Can we presume
19 that it is a similar mandate which is to
20 a monitor market as we just discussed?

21 R. Yes.

22 Q.364 And that the issue of transmission
23 congestion is also a main concern?

24 R. Yes.

25 Q.365 Also with respect to make sure in your

1 activities that they are not caused or
2 it's the impact of anti-competitive
3 conduct?

4 R. Right, to see whether the congestion is
5 not the result of anti-competitive
6 conduct.

7 Q.366 Okay. And that it was not neither for New
8 Mexico in your mandate to evaluate the
9 sufficiency of the Appendix K *per se* as
10 with respect to FERC Order 890?

11 R. Well, both Arizona and New Mexico, we are
12 mandated to monitor the planning process
13 but we haven't reported on it.

14 Q.367 When you say the planning process, do you
15 refer to the content of the Appendix K and
16 the way it's written in the OATT or you're
17 looking at facts and what happened during
18 the three months you're looking at making
19 the report?

20 R. We look at the planning process which
21 would, at this time, and in Arizona last
22 year would have reflected the adoption of
23 the Attachment K. So, we would have been
24 exposed to the various issues of
25 Attachment K but we don't report on it

1 quarterly.

2 Q.368 You don't report on that?

3 R. Right. We could if we wanted to but we

4 haven't found issues that are worth

5 reporting.

6 Q.369 If I refer to the first item, I see that

7 a draft report is expected in December

8 2010. We did not find that report. Has

9 this report been issued?

10 R. Yes, unfortunately, it's still in draft

11 form.

12 Q.370 I understand, Mr. Sinclair, that your

13 testimony in the present case would be the

14 first formal testimony on the issue

15 relating to FERC Order 890 transmission

16 planning process.

17 R. My first testimony before in a contested

18 hearing, you mean?

19 Q.371 I'm not talking about a contested hearing,

20 I'm talking about a written testimony on

21 the issue of compliance and a transmission

22 planning contained in Order 890.

23 R. Yes, this is my first case. I don't think

24 that cases like that are very widespread.

25 So, I don't think many... there has been

1 a lot of contested hearings on 890 tariffs
2 at this point.

3 Q.372 And am I also right to understand that it
4 would be your first testimony in a rate
5 case in Québec?

6 R. In a rate case, yes.

7 Q.373 And in a rate case in Canada also?

8 R. That's correct.

9 Q.374 Addressing a Canadian transmission
10 provider's OATT?

11 R. Yes. But as you know, this is a... HQT
12 strives to achieve reciprocity, so many of
13 the issues in transmission rate cases in
14 Québec are very similar to what I've seen
15 in the U.S.

16 Q.375 We'll come to the issue of reciprocity in
17 a moment.

18 Do you agree with me that there is
19 only one major transmission system in
20 Québec?

21 R. Yes.

22 Q.376 And that there is only one major
23 transmission provider being TransÉnergie?

24 R. Yes.

25 Q.377 And that TransÉnergie's system is one of

1 the four Interconnections - with a capital
2 I, I would say - in North America?

3 R. Yes.

4 Q.378 And that the other interconnections are
5 Eastern Interconnection, Western
6 Interconnection and ERCOT Interconnection?

7 R. Yes.

8 Q.379 That TransÉnergie's system is not
9 synchronized with and is isolated from New
10 Brunswick, Ontario and the United States?

11 R. Yes, although there is a distinction
12 between Québec and those other
13 interconnects. It's true that the other
14 interconnects are separate but the ties
15 between Québec and their neighbouring
16 Interconnects with a capital I are very
17 strong compared to say the connection
18 between ERCOT and the rest of the U.S. or
19 between the Eastern Interconnect and the
20 Western Interconnect. So, there is much
21 more economic activity between Québec and
22 its neighbouring interconnects.

23 Q.380 Okay. My question was about the fact
24 whether they were synchronized or not with
25 these neighbouring interconnects?

1 R. The ones you mentioned, no.

2 Q.381 And do you agree that this situation is
3 unique in North America?

4 R. It's a situation not to be interconnected?

5 Q.382 To have one interconnection that is not,
6 of course, synchronized but it is an
7 interconnection and that there is only one
8 major transmission provider, only one
9 major transmission system and the precise
10 situation I understand that you have
11 probably heard about the particularities
12 of the Québec interconnection. So, do you
13 agree with me that this is unique in North
14 America?

15 R. So, you're saying it's unique with respect
16 to its an Interconnect with a capital I
17 and there is only a single transmission
18 provider.

19 Q.383 And the fact that I would say maybe the
20 number of customers, you know, about and
21 other particularities, geographical
22 particularities at the HQT point, would
23 you say that the situation of the
24 Interconnection of Québec is different and
25 unique in North America?

- 1 R. I mean, I guess you could come up with,
2 you know, a set of characteristics that
3 are unique, so I think those which you
4 mentioned are unique.
- 5 Q.384 You agree with me that there is no
6 regional transmission organization or RTO
7 in the Interconnection of Québec?
- 8 R. Yes, I agree.
- 9 Q.385 Nor ISOs?
- 10 R. Yes.
- 11 Q.386 It is, to your knowledge, that the Régie
12 de l'Énergie is the only regulator having
13 jurisdiction over TransÉnergie aside from
14 the limited jurisdiction of the National
15 Energy Board?
- 16 R. That's correct.
- 17 Q.387 And that it is to the Régie to adopt
18 tariffs and conditions that are just and
19 reasonable?
- 20 R. Yes, I think that's true.
- 21 Q.388 And that in doing so, the Régie is not
22 subject to FERC's jurisdiction?
- 23 R. That's correct.
- 24 Q.389 And is not directly bound by FERC's
25 decisions or orders?

1 R. Correct.

2 Q.390 And that in the exercise of its
3 discretion, the Régie can adapt
4 TransÉnergie's tariffs to the specific
5 context in which TransÉnergie operates?

6 R. Yes.

7 Q.391 And that the Régie has the authority to
8 adopt an OATT that is not a line by line
9 reproduction of the *pro forma* OATT from
10 FERC?

11 R. Yes.

12 Q.392 And we will discuss the issue of
13 reciprocity in more detail later but do
14 you also agree that such an adaptation by
15 the Régie is not in and of itself a
16 violation of any applicable reciprocity
17 condition?

18 R. I agree.

19 Q.393 I understand that you have had the
20 occasion to review TransÉnergie's current
21 OATT before?

22 R. Yes.

23 Q.394 At least on one other occasion in the file
24 of the complaints before the Régie from
25 your client NLH?

1 R. That's correct.

2 Q.395 Any other occasions before preparing for
3 this file?

4 R. No.

5 Q.396 Have you reviewed the whole OATT or only
6 specific extracts?

7 R. I've had a pretty comprehensive review of
8 the OATT. There may have been some
9 sections that I didn't think were
10 necessary to review but, for the most
11 part, I think the ones that were at issue
12 in this case I reviewed all those
13 sections.

14 Q.397 And do you agree with me that there exists
15 differences between TransÉnergie's current
16 OATT and FERC Order... FERC *pro forma* OATT
17 before 890?

18 R. Yes.

19 Q.398 And that among examples, HQT's OATT
20 contains a Part IV for the supply of local
21 load which is also unique in North
22 America?

23 R. Yes.

24 Q.399 And it is to your knowledge that the
25 addition of such Part IV was asked and

1 approved by the Régie?

2 R. Yes.

3 Q.400 And it was an example of a response to the

4 particularities of the supply of local

5 load in Québec, this addition of a Part

6 IV?

7 R. Can you repeat that question?

8 Q.401 That the inclusion of a Part IV was in

9 response to the particularities of the

10 supply of local load in Québec?

11 R. That may have been the motivation but

12 whether I agree with that or not... if you

13 ask me whether I agree if that's true or

14 not?

15 Q.402 Well, I suggest to you, do you know if

16 it's the case?

17 R. Yes, I think there were statements like

18 that.

19 Q.403 I will now refer you to your amended

20 report dated September 23, 2010 and I

21 understand that the first version of this

22 report was filed on June 10th, 2009?

23 R. Yes.

24 14H23

25 Q.404 As with respect to the open planning, the

1 sections of your report dealing with that
2 issue are from page 12 to 23 and in the
3 amended report from page 40 to 42?

4 R. Yes.

5 Q.405 When I looked at pages 12 to 23, you will
6 agree with me that when you amended your
7 report, there were absolutely no changes
8 made to this whole section of your report?

9 R. That's correct.

10 Q.406 You basically added the two last pages to
11 respond to Mr. Rose's testimony?

12 R. Yes.

13 Q.407 So your opinion didn't change between June
14 2009 and September 2010 and you didn't
15 have to modify or add or amend this whole
16 section of your report?

17 R. That's correct.

18 Q.408 At page 4 of the report you describe the
19 object of the amendments. And it's an
20 underlined section because it was in, I
21 would say, revision marks. And the
22 question was:

23 « Do you have
24 additional testimony
25 beyond these

1 *sections? »*

2 And here you refer to amended evidence
3 that you wanted to respond. And it is
4 mentioned in the middle of the paragraph
5 HQT-12, document 1, Judah Rose, Rebuttal
6 Testimony on Appendix K in June 2009,
7 HQT-28, document 1, Phillip Q. Hanser
8 Report on Attachment C-1 for ATC
9 Coordination in June 2010. And 3, HQT-8,
10 document 6.1, Response to Questions 6.5
11 and 6.6 of Request for Information #1 by
12 RNCREQ and UC in July 2010.

13 Mr. Sinclair, I would like to know
14 what documentation or evidence you
15 received to prepare the amendments for
16 this report on issues of open planning?
17 And maybe the easiest way would be to use
18 the engagement, the undertaking words of
19 yesterday and to add the pages or the
20 references to open planning. So, if we
21 just want to make the exercise, it will
22 take a minute. I will take yesterday's
23 notes that we received. It was not
24 yesterday, it was on the 2nd of May, so
25 Monday.

1 Alors, Monsieur le Président,
2 simplement, je vais reprendre les numéros
3 puis je vais ajouter. Je ne sais pas si
4 on souhaite ajouter à la numérotation ou
5 simplement les inclure par référence les
6 pages?

7 On Monday, you took undertaking
8 number 2 which was:

9 « *Provide a list of*
10 *all documents provided*
11 *to Dr. Sinclair by NLH*
12 *on which he relied to*
13 *draft Section 2, pages*
14 *7 to 12 and 34 to*
15 *40. »*

16 I would add, « and section 3, pages 12 to
17 23 and pages 40 to 42 ». So, it would be
18 the same but with the pages added.

19 ENGAGEMENT #2 RÉVISÉ :

20 Provide a list of all documents provided to Dr.
21 Sinclair by NLH on which he relied to draft Section
22 2, pages 7 to 12 and 34 to 40; and section 3, pages
23 12 to 23 and 40 to 42.

24 Me MARIE-CHRISTINE HIVON :

25 Q.409 Undertaking number 3:

1 *« Provide a list of*
2 *the documents*
3 *translated for Dr.*
4 *Sinclair on which he*
5 *relied to prepare his*
6 *report. »*

7 This would already include the whole
8 report so I won't add to this one. Just
9 to make sure that we all understand.

10 Undertaking number 4 would not apply.
11 Undertaking number 5, it's in French:
12 *« Vérifier si*
13 *Dr Sinclair a reçu et*
14 *révisé les éléments de*
15 *preuve déposés au*
16 *dossier par un ou des*
17 *intervenants et sur la*
18 *base desquels il*
19 *aurait préparé son*
20 *rapport du 23*
21 *septembre 2010. »*

22 I understand this includes as well the
23 whole report so the open planning aspect.

24 And undertaking number 6:
25 *« Verify and confirm*

1 *whether Dr. Sinclair*
2 *attended at the*
3 *hearings of October 18*
4 *and 19. »*

5 I would add October 20 to 22, so 20, 21
6 and 22, 2010.

7 ENGAGEMENT #6 RÉVISÉ :

8 Verify and confirm whether Dr. Sinclair attended at
9 the hearings of October 18, 19, 20, 21 and 22, 2010.
10 Me MARIE-CHRISTINE HIVON :

11 Q.410 And I would also like to refer you, Mr.
12 Sinclair, if you remember today, it will
13 make things maybe more efficient, to
14 exhibits HQT-15 to HQT-27. I would like
15 you to have it before you.

16 R. Okay. I have them electronically here.

17 Q.411 I would just like to go through them and
18 you tell me if you were provided or if you
19 have seen these exhibits before. So, HQT-
20 15, document 2?

21 R. Yes.

22 Q.412 Transmission loading relief?

23 R. Yes.

24 Q.413 And you had received that before preparing
25 the amended report?

1 R. Yes.
2 Q.414 16, document 2, Capital projects and
3 transmission as well?
4 R. Yes.
5 Q.415 HQT-18.2, Process for approval of capital
6 projects by the Régie de l'énergie?
7 R. Yes.
8 Q.416 19.2, System planning and rate cases?
9 R. Yes.
10 Q.417 20.2, Transmission system planning,
11 exhibit HQT-9, document 1, in the file
12 3706-2009?
13 R. Yes.
14 Q.418 HQT-21, it's in French, do you remember
15 having received a translation of the
16 Filing Guidelines by the Régie de
17 l'énergie for Hydro-Québec TransÉnergie?
18 R. 21.1?
19 Q.419 Yes because there is no 21.2, there is no
20 translation of that document. These are
21 filing guidelines.
22 R. Let me take a look.
23 Q.420 Okay.
24 R. I don't have a hard copy of any
25 translation of this. When I mean hard

1 copy, I mean that there wasn't a document
2 produced.
3 Q.421 Provided to you?
4 R. Right.
5 Q.422 So, this would anyway be part of one of
6 the undertakings but you know today, you
7 remember today that you have never seen a
8 translation of that before?
9 R. Right.
10 Q.423 And I'm at HQT-22, document 2, which is
11 Environmental impact assessment process.
12 This one you've...
13 R. I've seen that.
14 Q.424 ... seen that before September 23?
15 R. Before my report, yes.
16 Q.425 Yes. HQT-23, document 2...
17 R. Yes.
18 Q.426 ... Process for Examination and Complaint?
19 R. Same answer.
20 Q.427 Same answer for HQT-24, document 2?
21 R. Same answer.
22 Q.428 HQT-25, document 2?
23 R. Same answer.
24 Q.429 HQT-26, document 1?
25 R. Yes, same answer.

1 Q.430 And HQT-27, document 1?

2 R. Same answer.

3 Q.431 So, you have received all of these. And
4 this was evidence filed between your two
5 reports, right? By HQT.

6 R. Yes.

7 Q.432 And when we look at your report, both
8 between pages 12 to 23, there were no
9 amendments so no references to these
10 documents, to these exhibits. And as
11 well, in the amended addition to your
12 report on open planning, which is from
13 page 40 to 42, there is no reference to
14 these exhibits in there?

15 R. That's correct.

16 Q.433 I refer you to page 2 of your report, the
17 last line of the page.

18 R. Yes.

19 Q.434 We agree that you mention that HQT is not
20 under FERC jurisdiction. So we agree on
21 that. This is what is mentioned. And you
22 continue:

23 « However... »

24 And I'm on top of page 3.

25 « ... in order for HQT

1 *or its affiliates to*
2 *access the benefits of*
3 *open access*
4 *transmission in U.S.*
5 *electricity markets,*
6 *HQT is required to*
7 *offer reciprocal open*
8 *access transmission*
9 *service on its system*
10 *that is consistent*
11 *with or superior to*
12 *the pro forma OATT. »*

13 R. Yes.

14 Q.435 My first question is do you agree with me
15 that HQT, HQ TransÉnergie does not access
16 the benefits of open access transmission
17 in the U.S.?

18 R. Right, its affiliates.

19 Q.436 And here I would like to review with you
20 some of the, I would say, basic principles
21 with regard to the reciprocity condition.
22 I would invite you to take Order 890 at
23 paragraph 190.

24 R. Okay.

25 Q.437 And Order 890-B and the *pro forma* OATT at

1 the end of the Order, at section 6,
2 please.

3 R. Okay, so let's start with... okay. So,
4 890 and 890-B? Okay, I have it here.
5 What was the paragraph in 890 that you
6 want me to go to?

7 Q.438 190.

8 R. Okay.

9 Q.439 Mr. Sinclair, I will let you the time to
10 look at paragraph 190. My first question
11 will be do you agree that paragraph 190 is
12 relating to modification to section 6 of
13 the *pro forma* OATT?

14 R. I can't tell just looking at paragraph
15 190. Let me see. So, you're saying that
16 this is from section 6 of the *pro forma*
17 OATT?

18 Q.440 Yes.

19 R. Subject to check, I'll believe you, yes.

20 Q.441 Well, if we look at section 6, we'll see
21 that there is a reference to RTOs and
22 ISOs. I'm looking at the previous
23 paragraph where FERC confirms that. Well,
24 we see from paragraph 190 that:

25 « The Commission

1 *retains the*
2 *reciprocity language*
3 *in Order 888 but*
4 *updates it to include*
5 *references to ISOs and*
6 *RTOs as suggested by*
7 *EI. We also modified*
8 *the reciprocity*
9 *provision to provide*
10 *that if an ISO or RTO*
11 *is the transmission*
12 *provider, the*
13 *reciprocity obligation*
14 *is owed to all members*
15 *of that ISO or RTO. »*

16 And if we refer to section 6 of the OATT,
17 *pro forma* OATT... you have it before you,
18 Mr. Sinclair?

19 R. Section 6 I see as information collection
20 statement.

21 Q.442 Section 6 is Reciprocity. I'm at original
22 sheet 33 of the OATT.

23 R. Oh, I'm sorry, okay. Let me just go
24 there, okay? What page was it on, 133?
25 Sheet 133?

1 Q.443 33.
2 R. 33?
3 Q.444 33.
4 R. Sorry, it's taking me a while to navigate
5 through this, it's a big Order.
6 Q.445 You may have the paper copy in front of
7 you if it's easier.
8 R. Maybe that's easier. Order 890, right?
9 Q.446 890-B.
10 R. Okay. But I'm sorry, my sheet 33 is
11 section 7 but I see on... section 6 here,
12 okay.
13 Q.447 The name of the section is Reciprocity, we
14 have that? And what we read is:
15 « A transmission
16 customer receiving
17 transmission service
18 under this Tariff
19 agrees to provide
20 comparable
21 transmission service
22 that it is capable of
23 providing to the
24 transmission provider
25 on similar terms and

1 *conditions over*
2 *facilities used for*
3 *the transmission of*
4 *electric energy owned,*
5 *controlled or operated*
6 *by the transmission*
7 *customers and over*
8 *facilities used for*
9 *the transmission of*
10 *electric energy owned,*
11 *controlled or operated*
12 *by the transmission*
13 *customers' corporate*
14 *affiliates. ».*

15 You are familiar with this section 6, Mr.
16 Sinclair?

17 R. Yes.

18 Q.448 Do we agree that this obligation at
19 section 6 is not an obligation owed by the
20 transmission provider with such an OATT?

21 R. Let me read this again, I think I lost...
22 So, what was your question again?

23 Q.449 Do we agree that this section 6 does not
24 provide an obligation owed by the
25 transmission provider; it's an obligation

1 on the transmission customer that is
2 seeking access to the transmission
3 provider who has this section 6 in its
4 OATT?

5 R. Yes.

6 Q.450 It says:

7 « A transmission
8 customer receiving
9 transmission service
10 under this Tariff
11 agrees to provide
12 comparable
13 transmission service
14 that it is capable of
15 providing to the
16 transmission provider
17 on similar terms or
18 conditions. »

19 And we can go just two lines lower:

20 « ... over facilities
21 used for the
22 transmission of
23 electric energy owned,
24 controlled or operated
25 by the transmission

1 *customers' corporate*
2 *affiliates. »*

3 So, we agree that it is an obligation on
4 the customer seeking access under this
5 Tariff?

6 14H39

7 R. You know, I've never actually... Yes,
8 you're right. Right.

9 Q.451 So, the customer seeking access to the
10 transmission provider's facilities and who
11 has an affiliate which owns transmission
12 facilities, right?

13 R. Yes.

14 Q.452 Okay. And the criteria under this Section
15 6 is:

16 « *Whether such*
17 *affiliates of the*
18 *customer provides*
19 *comparable*
20 *transmission service*
21 *on similar terms and*
22 *conditions. »*

23 And I'm looking at the words in this
24 Section 6.

25 R. Okay, yes.

1 Q.453 You agree with that, okay. Is it to your
2 knowledge whether TransÉnergie has a
3 similar Section 6 in its current OATT?
4 R. I believe it does.
5 Q.454 Have you verified that?
6 R. I haven't checked that for a while.
7 Q.455 Okay. I suggest we do.
8 R. We can do it now.
9 Q.456 Okay. If you want to look at it and
10 confirm it to me, yes.
11 R. You can tell me and I'll take your word
12 for it but I can look for it too.
13 Q.457 Okay, that's good. So, for the reason we
14 just mentioned, TransÉnergie does not have
15 any obligation under its own Section 6 of
16 its own OATT, right?
17 R. HQT does not have an obligation under its
18 own Section 6, right.
19 Q.458 It is only if an affiliate of TransÉnergie
20 were seeking access to a U.S. public
21 utility transmission provider that such an
22 affiliate could need to make such a
23 demonstration, right?
24 R. That's correct.
25 Q.459 I now come back to Sections 190 and 191 of

1 FERC Order 890 which relate to the
2 modification suggested at Section 6. And
3 as we mentioned earlier, the Commission,
4 the FERC's determination here is that the
5 Commission retains the reciprocity
6 language in the Order 888, *pro forma* OATT
7 except with respect to the relation to RTO
8 and ISO.

9 Q.460 That's correct.

10 R. That's correct.

11 Q.461 So, what we were discussing earlier,
12 Section 6, is currently the same wording
13 except with respect to ISO and RTO. This
14 criteria has not been modified...

15 R. That's correct.

16 Q.462 ... in the 890 FERC Order?

17 R. Yes.

18 Q.463 If we look at paragraph 191, it is
19 mentioned:

20 « We will also retain
21 Order number 888,
22 three alternative
23 provisions for
24 satisfying the
25 reciprocity condition,

1 *i.e. a non-public*
2 *utility that owns,*
3 *controls or operates*
4 *transmission and seeks*
5 *transmission service*
6 *from a public utility,*
7 *must either satisfy*
8 *its reciprocity*
9 *obligation under a*
10 *bilateral agreement,*
11 *seek a waiver of the*
12 *OATT reciprocity*
13 *condition from the*
14 *public utility or file*
15 *a safe harbour tariff*
16 *with the Commission.*
17 *Thus, for non-public*
18 *utilities that choose*
19 *to use the safe*
20 *harbour tariff, its*
21 *provisions must be*
22 *substantially*
23 *conforming or superior*
24 *to the revised pro*
25 *forma OATT in this*

1 *Final Rule. »*

2 So, we agree that FERC suggests three
3 alternative provisions for satisfying the
4 so-called reciprocity condition?

5 R. Yes.

6 Q.464 File a safe harbour tariff or enter into
7 a bilateral agreement or seek a waiver?

8 R. Yes.

9 Q.465 Okay. And these three alternatives
10 existed under Order 888?

11 R. Yes.

12 Q.466 If we continue at paragraph 191, later in
13 the paragraph:

14 « As the Commission
15 stated in Order 888-A,
16 a non-public utility
17 may limit the use of
18 its voluntarily offer
19 safe harbour
20 reciprocity tariff
21 only to those
22 transmission providers
23 from whom the non-
24 public utility obtains
25 open access service as

1 *long as the tariff*
2 *otherwise*
3 *substantially conforms*
4 *to the pro forma*
5 *OATT.»*

6 So, the reciprocity condition can be
7 limited to those transmission providers
8 from whom it obtains open access service.
9 It's also something mentioned here?

10 R. I think that's limited to non-public
11 utilities.

12 Q.467 Yes.

13 R. So, that would be like a cooperative or a
14 municipal utility.

15 Q.468 And we agree that TransÉnergie is not a
16 public utility in the United States?

17 R. That's right, yes.

18 Q.469 And TransÉnergie is not a non-public
19 utility in the United States what we could
20 call a domestic non-public utility. We
21 agree with that?

22 R. I think so, yes. I haven't looked at that
23 criteria for a while.

24 Q.470 You are not sure whether TransÉnergie
25 would be a domestic non-public utility

1 from a U.S. perspective?

2 R. It's not a public utility in the sense
3 that FERC regulates public utilities but
4 I can't remember if its... what its
5 designation is.

6 Q.471 You don't remember its designation?

7 R. With regard to reference in the tariff.
8 But when you say non-public utility, it
9 reminds me that international, non-U.S.
10 utilities may be in that category.

11 Q.472 But you're not sure?

12 R. I can't remember sitting here.

13 Q.473 Am I right to understand, Mr. Sinclair,
14 that there is no reference in your report
15 relating to Section 211-A of the Federal
16 Power Act?

17 R. I'm sorry, can you repeat that?

18 Q.474 Do you agree with me that there is no
19 reference in your report with regard to
20 the reciprocity condition to Section 211-A
21 of the Federal Power Act?

22 R. That's correct.

23 Q.475 And you have not referred to this section
24 during your testimony in chief here before
25 the Régie?

1 R. That's correct.

2 Q.476 Do you agree... can I understand that you
3 did not take this section into
4 consideration in your analysis on the
5 issue of reciprocity in the present case?

6 R. Yes, I didn't really consider reciprocity
7 an issue for analysis in my testimony. I
8 considered it somewhat self-evident.

9 Q.477 You did not... sorry, you did not consider
10 really the issue of reciprocity in your
11 testimony. Is that what you said?

12 R. Yes, I didn't see it as something I needed
13 to debate or a factual basis.

14 Q.478 Okay. But you referred to the reciprocity
15 obligations in your report but you did not
16 expand on that in your report.

17 R. That's correct.

18 Q.479 For you it was not necessary to do so?

19 R. I think it went without debate that that
20 was... that one of the goals of this
21 hearing was to provide an open access
22 tariff in light of reciprocity
23 requirements.

24 Q.480 Okay. And you also mentioned a few
25 minutes ago that you don't know if

1 TransÉnergie would qualify as a non-public
2 utility or domestic non-public utility
3 when we read FERC orders?

4 R. Yes. I know that non-public utility has
5 a specific defined meaning but I'd have to
6 look it up.

7 Q.481 Okay. So, when you mention at
8 paragraph... page 2 of your report, in
9 fact, page 3 of your report, that HQT is
10 required to have FERC reciprocal open
11 access transmission service on its system
12 that is consistent with or superior to the
13 *pro forma* OATT, what was the basis of that
14 criteria that you apply in your report I
15 suppose?

16 R. The basis of that statement is just that
17 HQT, and this is stated in some of the
18 HQT's own evidence, is motivated in Part
19 II to satisfy reciprocity.

20 Q.482 But your criteria that it has to be
21 consistent with or superior to the *pro*
22 *forma* OATT, where do you take this
23 criteria?

24 R. The criteria of superior to or consistent
25 with?

- 1 Q.483 Yes.
- 2 R. I mean, that's standard nomenclature for
3 open access that if you want it to be
4 deemed having an open access tariff, you
5 have to have consistent or superior terms
6 and conditions to the OATT, to the *pro*
7 *forma* OATT.
- 8 Q.484 So, this is your general understanding
9 from your experience in other matters?
- 10 R. Yes.
- 11 Q.485 For public utilities in... for public
12 utilities in the United States, right?
- 13 R. Yes.
- 14 Q.486 Do you know what Section 211-A of the
15 Federal Power Act provides?
- 16 R. Probably but I may not know it by that...
17 by the section number and letter.
- 18 Q.487 So you would not be able to tell us
19 whether you consider that FERC has
20 jurisdiction over TransÉnergie based on
21 its powers under Section 211-A, you don't
22 know?
- 23 R. Well, I can tell you that, that FERC does
24 not have jurisdiction over TransÉnergie.
- 25 Q.488 Okay. And 211-A would give FERC

1 jurisdiction over what kind of utilities,
2 do you know?

3 R. I don't know, I'd have to see it.

4 Q.489 You don't know. We will now look at the
5 Market-Based-Rate authorization
6 requirement. Mr. Sinclair, you are
7 familiar with that?

8 R. Yes.

9 Q.490 This requirement would be applicable when
10 a seller of electricity seeking to make
11 wholesale sales of electricity in the
12 United States. That's correct?

13 R. Market-Based rates?

14 Q.491 Yes.

15 R. Market-Based rates is the ability to offer
16 non-cost-based rates. It's sort of a
17 license from FERC to offer... to sell
18 electricity at non-cost-based rates.

19 Q.492 In the United States?

20 R. In the United States.

21 Q.493 And to obtain such an authorization, the
22 seller would have to demonstrate, among
23 other things, the lack of vertical market
24 power. Is that to your knowledge?

25 R. That's how I understand it.

1 Q.494 Okay. I would like to refer you, Mr.
2 Sinclair, to paragraph 35.37 of the Code
3 of Federal Regulations. You're familiar
4 with that?
5 R. I don't know.
6 Q.495 You don't know?
7 R. I don't know it by section number.
8 Q.496 Okay. We have filed this document under
9 Exhibit B-202, HQT-49.
10 R. HQT evidence?
11 Q.497 Yes, during cross-examination. So, I
12 don't know if your counsel has a copy.
13 Me ANDRÉ TURMEL :
14 On en a une copie, je pense...
15 Me MARIE-CHRISTINE HIVON :
16 35.37.
17 Me ANDRÉ TURMEL :
18 Avez-vous une copie?
19 Me MARIE-CHRISTINE HIVON :
20 Moi, je n'en ai pas pour vous.
21 Q.498 So, you have a copy with you, Mr.
22 Sinclair?
23 R. Yes.
24 Q.499 Do you recognize it?
25 R. Well, you know, if I understand this,

1 these are rules that are really the
2 distillation of FERC policy. So, you
3 know, I've seen this in various forms.
4 So, I generally understand the lingo and
5 the concepts. I didn't see this
6 particular exhibit.

7 Q.500 Okay. No but when we refer to Market-
8 Based-Rate Authorization and the
9 demonstration of the lack of vertical
10 market power, did you know that it was
11 relating to this section of the Code of
12 Federal Regulation?

13 R. I don't think I would have looked it up in
14 the Code of Federal Regulation. I would
15 have found it in some FERC document.

16 Q.501 In some FERC document?

17 R. Yes, they have the guidelines and all
18 that.

19 Q.502 Okay. So, you may not be familiar with
20 the reference but you know the content,
21 when you read the content, you know...

22 R. Yes.

23 Q.503 ... what...

24 R. I haven't read it yet but I would imagine
25 I know the content.

1 Q.504 Okay. Could you take the time to read
2 35.37 d) please?
3 R. 35.37?
4 Q.505 Yes.
5 R. d)?
6 Q.506 d) which starts with « To demonstrate a
7 lack of vertical market power ».
8 R. Okay. Yes, I'm familiar with that.
9 Q.507 Okay. So, to demonstrate... and I will
10 read the relevant parts.
11 « To demonstrate a
12 lack of vertical
13 market power, a seller
14 that owns, operates or
15 controls transmission
16 facilities or whose
17 affiliates own,
18 operate or control
19 transmission
20 facilities must have
21 on file with the
22 Commission an open
23 access transmission
24 tariff as described in
25 35.28 provided,

1 *however, that a seller*
2 *whose foreign*
3 *affiliate owns,*
4 *operates or controls*
5 *transmission*
6 *facilities outside of*
7 *the United States that*
8 *can be used by*
9 *competitors of the*
10 *seller to reach United*
11 *States markets, must*
12 *demonstrate that such*
13 *affiliate, either has*
14 *adopted and is*
15 *implementing an open*
16 *access transmission*
17 *tariff as described in*
18 *35.28 or otherwise*
19 *offers comparable,*
20 *non-discriminatory*
21 *access to such*
22 *transmission*
23 *facilities. »*

24 R. Okay.

25 Q.508 So, you are familiar with that?

1 R. Yes.

2 Q.509 Okay. So:

3 « The seller can
4 demonstrate either
5 that its foreign
6 affiliate has adopted
7 and is implementing an
8 open access
9 transmission tariff or
10 otherwise offers
11 comparable non-
12 discriminatory access
13 to such transmission
14 facilities. »

15 R. Yes.

16 Q.510 Okay. So, can we agree, Mr. Sinclair,
17 that when you refer in your report to the
18 reciprocity condition, this is what we are
19 talking about, either what we saw, that
20 there are two aspects of it, Section 6 and
21 Market-Based-Rate Authorization, is this
22 what you were referring to?

23 R. Yes.

24 Q.511 I would like to refer you to page 4 of
25 your report, the second paragraph where

1 you mention under the question:

2 « *What standard will*
3 *you use to assess the*
4 *comparability of the*
5 *revised HQT OATT to*
6 *the reforms in the pro*
7 *forma 890 OATT? »*

8 You mention:

9 « *In evaluating the*
10 *revised HQT OATT, I*
11 *will apply the*
12 *standard identified in*
13 *Order 890 to assess*
14 *whether the revised*
15 *HQT OATT meets the*
16 *reforms. »*

17 And then you quote paragraph 135 of FERC
18 Order 890.

19 I would like you to go to paragraph
20 135. I suggest to you that this paragraph
21 relates to the public utilities
22 reciprocity discussion.

23 R. Okay.

24 Q.512 You agree with that?

25 R. So, you're saying that this applies only

1 to public utilities?

2 Q.513 Well, do you have FERC Order...

3 R. I'm looking at it now, yes.

4 Q.514 Okay, okay. So, 135, if you go back to

5 124, if we go at the beginning of this

6 section, we are under the title *Non-ISO/*

7 *RTO Public Utility Transmission Providers.*

8 R. Okay.

9 Q.515 So, I understand here that you are

10 referring to the... to a section of the

11 FERC Order relating to public utilities

12 which are in the U.S., right?

13 R. Yes.

14 Q.516 Okay. But do I have to understand that

15 this is what you apply to TransÉnergie in

16 your report?

17 R. Yes.

18 Q.517 The sections relating to the public

19 utilities in the U.S. with regard to

20 reciprocity conditions and the criteria

21 and the tests?

22 R. Yes. I applied... I was judging the

23 proposed tariff to determine whether any

24 changes, any differences between it and

25 the 890 *pro forma* OATT provided superior

1 or equivalent benefits to transmission
2 customers.

3 Q.518 And you made no distinction whether it is
4 a public, a non-public, a domestic non-
5 public utility? There were no nuances or
6 any distinction to be made...

7 R. I did not see the need to.

8 Q.519 You did not see the need. Can you explain
9 to us why?

10 R. That this principle would apply to both,
11 to public utilities as you point out but
12 also to apply in the case of HQT.

13 Q.520 Okay. So, for FERC there would be no
14 difference when FERC would look at a
15 foreign utility OATT or a public utility
16 OATT, that there would be no... absolutely
17 no difference in the way they would look
18 at it?

19 R. I don't think with respect to that
20 particular criteria, no.

21 Q.521 Okay.

22 Monsieur le Président, j'allais
23 aborder un autre sujet sur la
24 planification. Alors, ce serait peut-
25 être... je regarde l'heure et finalement

R-3669-2008
4 MAI 2011

PANEL NLH
Contre-interrogés par Me Hivon

1 il est presque pile 3 h 00.

2 LE PRÉSIDENT :

3 Ce serait un bon temps, je pense, pour prendre la
4 pause jusqu'à demain 9 h 00.

5 Me MARIE-CHRISTINE HIVON :

6 Merci.

7 LE PRÉSIDENT :

8 Merci.

9 AJOURNEMENT AU 5 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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