

RÉGIE DE L'ÉNERGIE

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

DOSSIER : R-3669-2008

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

AUDIENCE DU 5 MAI 2011

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DENISE TURCOT
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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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#1 (RÉVISÉ) :

Provide a copy of all written exchanges between Dr. Sinclair and NLH defining Dr. Sinclair's mandate in this hearing, including the additional two documents referred to as well as any other documents including e-mails, including letters or other documents, be it in a hard format or in an electronic format defining the mandate. 62

1 EN L'AN DEUX MILLE ONZE (2011), ce cinquième (5e)
2 jour du mois de mai,

3

4 LA GREFFIÈRE :

5 Veuillez prendre place, s'il vous plaît.

6 LE PRÉSIDENT :

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

9 LA GREFFIÈRE :

10 Protocole d'ouverture. Audience du 5 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 LE PRÉSIDENT :

16 Alors, dans un premier temps, la Régie fait un
17 rappel pour le suivi du dépôt des engagements
18 souscrits lors de l'audience et ça s'adresse à
19 Énergie Brookfield Marketing, Newfoundland Labrador
20 Hydro et HQP. Est-ce qu'il y a du nouveau? Ah!
21 oui? Excellent.

22 Me MARIE-CHRISTINE HIVON :

23 Alors, bonjour, Monsieur le Président, bonjour,
24 Madame, Monsieur les régisseurs. On peut peut-être
25 commencer ce matin justement avec le dépôt de

1 l'engagement qu'avait souscrit l'affiant du
2 Producteur dans le cadre de la requête pour
3 traitement confidentiel.

4 Je vous remets, j'ai l'original de la
5 lettre avec le courriel qui nous a été remis après
6 l'ajournement hier. Alors, c'est la raison pour
7 laquelle on vous le remet ce matin, à charge de vous
8 le remettre.

9 Je comprends que ce document fera
10 également partie du sous-dossier, si on peut
11 l'appeler ainsi, relativement au traitement
12 confidentiel comme ça a été le cas pour les autres
13 documents qui ont été déposés dans ce cadre-là.

14 LE PRÉSIDENT :

15 Tout à fait. Maître Turmel.

16 Me ANDRÉ TURMEL :

17 Oui, bonjour, Monsieur le Président. Alors, pour
18 notre part, pour NLH, nous allons vous déposer ce
19 matin une partie de ce qui a été demandé en
20 engagement.

21 Alors, dans un premier temps, bien, dans
22 les faits, ce sont les engagements, les réponses aux
23 engagements 1 à 15.

24 LE PRÉSIDENT :

25 1 à 15, très bien.

1 Me ANDRÉ TURMEL :

2 Donc, c'est jusqu'à hier. Évidemment, les
3 engagements pris hier et aujourd'hui ça va à
4 certainement un peu plus tard. Donc, un instant.
5 Donc, ce sont les undertakings directed at Dr.
6 Robert Sinclair, engagements 1 à 15 que Dr Sinclair
7 a produits. On les dépose ici avec... peut-être on
8 va en donner deux copies à nos collègues.

9 Et attaché à ces engagements-là, il y a en
10 référence, je pense, c'est à l'engagement numéro 1,
11 c'était donc le mandat... le mandat écrit, donc qui
12 est joint au document.

13 LE PRÉSIDENT :

14 Maître Hamelin.

15 Me PAULE HAMELIN :

16 Bonjour, Monsieur le Président. Mes collègues ont
17 tout bon et... alors, juste pour vous dire qu'on
18 devrait être en mesure de pouvoir envoyer l'ensemble
19 des engagements également aujourd'hui.

20 LE PRÉSIDENT :

21 Aujourd'hui.

22 Me PAULE HAMELIN :

23 Alors, notre objectif, c'est de pouvoir transmettre
24 le tout. Si jamais il y avait certains documents
25 qu'il manquait, à ce moment-là, on en enverrait une

1 partie mais notre objectif c'est de pouvoir y
2 répondre aujourd'hui.

3 LE PRÉSIDENT :

4 Très bien. Merci. Alors, Maître Hivon, nous
5 pouvons continuer.

6 PANEL NLH

7 Dr ROBERT SINCLAIR

8 CONTRE-INTERROGÉ PAR Me MARIE-CHRISTINE HIVON :

9 Alors, Monsieur le Président, nous allons continuer
10 le contre-interrogatoire de monsieur Sinclair.

11 Q.1 Good morning, Mr. Sinclair.

12 R. Good morning.

13 Q.2 Thank you for being with us this morning
14 to continue...

15 R. Thank you.

16 Q.3 ... your cross-examination. So, I would
17 start by referring you to your report,
18 amended report, page 12. You're in the
19 section of... sub-section 3 *Coordinated,*
20 *Open, and Transparent Planning* and I would
21 invite you to go to page 13, first
22 paragraph under the question:

23 « What is the
24 rationale for
25 reforming the

1 *transmission planning*
2 *process? »*

3 And you write:

4 « *Reform of the*
5 *planning process under*
6 *Order 890 is based --*
7 *page 13 - Reform of*
8 *the planning process*
9 *under Order 890 is*
10 *based on the*
11 *recognition that,*
12 *despite general*
13 *requirements to plan*
14 *the transmission*
15 *network to meet the*
16 *needs of all*
17 *transmission*
18 *customers,*
19 *transmission providers*
20 *had adverse incentives*
21 *to use the planning*
22 *process to their own*
23 *competitive*
24 *advantage. »*

25 Am I right to understand, Mr. Sinclair,

1 that what you are saying is that the
2 rationale for including an Appendix K
3 would be to counteract transmission
4 providers' adverse incentives to use
5 planning process to their own competitive
6 advantage prior to Order 890?

7 R. Yes.

8 Q.4 This is what you're saying. And because
9 FERC found that adverse incentives existed
10 and transmission providers could be
11 tempted to use the planning process to
12 their own competitive advantage?

13 R. Yes.

14 Q.5 So, the existence of such incentives could
15 create the potential for undue
16 discrimination. This is what you're
17 saying?

18 R. Yes.

19 Q.6 I refer you to the last paragraph of page
20 13 where you refer to the nine principles
21 of the planning process. The paragraph
22 starts with:

23 « A *planning process*
24 that meets the minimum
25 requirements of the

1 *Order would need at*
2 *least nine*
3 *principles. »*

4 So, we are here looking at the content of
5 an Appendix K, right? Not at the...

6 whether there should be one or not, we're
7 looking at the content of an Appendix K?

8 R. Yes, the principles of the coordinated,
9 open and transparent planning which are
10 reflected in Attachment K, right.

11 Q.7 Yes. And you mentioned, if we continue in
12 that paragraph:

13 « *Although all of the*
14 *planning principles*
15 *are important, the*
16 *first four of the nine*
17 *principles*
18 *(coordination,*
19 *openness,*
20 *transparency, and*
21 *information exchange)*
22 *define the essential*
23 *nature of the proposed*
24 *changes. »*

25 So, for you, the relative importance of

1 the nine principles may differ? There are
2 the first four and then there are the
3 others?

4 R. I think that the first four are the most
5 important but the others are important, as
6 I say there.

7 Q.8 Yes. On page 14 of your report, at the
8 bottom of the page, under the question:

9 « What does a
10 transmission provider
11 have to do to meet the
12 transmission planning
13 requirements under
14 Order 890? »

15 You mention, if we go to the top of page
16 15:

17 « Transmission
18 providers with
19 existing planning
20 processes must show
21 such processes are
22 "consistent with or
23 superior to" the
24 requirements in the
25 Order. »

1 Am I right to understand that you are not
2 suggesting, *per se*, that TransÉnergie
3 itself has a duty to demonstrate this to
4 the FERC, right?

5 R. Right.

6 Q.9 Okay. I'm now at page 15, bottom of the
7 page, under the question:

8 « *Please explain HQT's*
9 *claim that deficient*
10 *transmission*
11 *infrastructure*
12 *investment is the*
13 *primary motivation for*
14 *the reform of the*
15 *planning process under*
16 *Order 890.* »

17 First, because we are starting to look
18 here at the question of infrastructure
19 investment, I understand from the content
20 of your report that you were not
21 performing, in the performance of your
22 mandate, asked to perform an analysis of
23 the level of investment in TransÉnergie's
24 network?

25 There is no analysis here on the

1 investment level in the TransÉnergie's
2 network?

3 R. Correct.

4 Q.10 And you did not... you were not asked to
5 make a comparison between investment in
6 the TransÉnergie's network compared with
7 the situation in the United States?

8 R. No, I was not but there is some evidence
9 filed by your witness, Mr. Rose, that
10 purported to claim higher levels of
11 investment in Hydro-Québec versus typical
12 U.S. utility.

13 Q.11 And there is nothing in this report that
14 addresses that, right?

15 R. That's right.

16 Q.12 Okay.

17 R. But I had the occasion to look at that
18 evidence and one thing that occurred to
19 me, which was not obvious by the way Mr.
20 Rose presented it, was that HQT has much
21 higher voltage lines, so any comparison of
22 investment...

23 Q.13 I'm sorry, I don't want to interrupt your
24 answer. My question was, in this report
25 there is no analysis with respect to

1 investment levels on TransÉnergie's
2 network? And I think your answer was:
3 No, there is not.

4 Me ANDRÉ TURMEL :

5 Je m'excuse, Monsieur le Président, je vais
6 m'objecter à ce dernier commentaire, question, là.
7 Je pense qu'on peut laisser... il qualifiait la
8 réponse, il qualifie sa réponse. La question de ma
9 consoeur, je veux dire, je comprends qu'elle est sur
10 le rapport mais l'expert peut simplement dire oui
11 mais dans votre preuve, j'ai lu ceci, cela, qui me
12 porte à faire un commentaire. Mais même si on ne
13 parle pas exactement de cette mention-là, je pense
14 qu'on devrait le laisser répondre, là. Ça
15 m'apparaît un petit peu inopportun, là, de
16 l'empêcher de s'exprimer.

17 Me MARIE-CHRISTINE HIVON :

18 Monsieur le Président, je ne veux pas empêcher
19 monsieur Sinclair de s'exprimer. Je pense qu'il est
20 légitime de pouvoir contre-interroger l'expert sur
21 la preuve qu'il a au dossier et l'expertise qu'il a
22 déposée au dossier et je pense qu'on n'est pas ici
23 pour obtenir verbalement en contre-interrogatoire un
24 complément d'expertise.

25 Alors, évidemment, je m'objecte à ce qu'on

1 utilise cette question. Ma question était très
2 précise pour les fins de son rapport qui est un
3 rapport amendé qui a été déposé en septembre 2010.
4 Alors, le contre-interrogatoire porte sur le rapport
5 et la preuve au dossier, Monsieur le Président.

6 LE PRÉSIDENT :

7 Alors, ici, la Régie permet le bref ajout que fait
8 le témoin expert suite à la question posée. La
9 Régie n'a pas vu que ça déborde de façon outrancière
10 aux besoins de l'interrogatoire ici. Donc, la Régie
11 permet la réponse.

12 R. Thank you. Yes. So, the question was
13 whether I had done analysis or was asked
14 to do an analysis. Of course, I was asked
15 to do an analysis of the issues as they
16 arise and one issue that arose was Mr.
17 Rose's comparison of investment in the
18 U.S. versus investment in H.Q. in Québec
19 and he showed that per megawatt of load
20 there was a higher investment in
21 transmission in Québec.

22 And I think part of that would be
23 explained by the fact that Québec relies
24 on a very high transmission voltage system
25 to carry Hydro resources at very long

1 distances which required much higher
2 levels of investments. So, I don't think
3 it would show whether the investment is
4 more adequate. I think it just means it's
5 more expensive in Québec to provide
6 transmission. I think Mr. Rose
7 represented it slightly differently than
8 that.

9 Me MARIE-CHRISTINE HIVON :

10 Q.14 And this is based on the report of Mr.
11 Rose or the report of June 2009, Mr.
12 Sinclair?

13 R. I believe it was in his response to the
14 RN, the RNCREQ, RNCREQ data request.

15 Q.15 Of July 2010, Mr. Sinclair?

16 R. I think that's right, yes, but I'd have to
17 check it.

18 Q.16 And have you performed a specific analysis
19 to review the comment you just made with
20 respect to the high voltage lines and the
21 fact that the situation may be different
22 than what was proposed by Mr. Rose?

23 R. Well, my analysis was just based on logic.
24 I looked at the analysis and one thing I
25 noticed about the analysis was that it

1 failed to recognize that there is a much
2 higher voltage required in Québec than in
3 most U.S. systems.

4 Q.17 And on which facts do you... what are the
5 facts supporting this comment that you are
6 making today?

7 R. Well, I know that the large Hydro
8 resources in the North of Québec are
9 carried on 765 kilovolt lines which are
10 very rare in the U.S. We have a few but
11 typically the high voltage in the U.S. is
12 500 kV and there is very long high voltage
13 lines in Québec which are expensive to put
14 in, maybe economically rational, but they
15 are expensive.

16 Q.18 But you have not made any verification to
17 review the figures proposed by Mr. Rose?
18 You don't have any other figures to
19 propose to this Bench today?

20 R. No, I don't. I thought... I just assumed
21 Mr. Rose's figures were correct.

22 Q.19 And again, Mr. Sinclair, you decided not
23 to include that in your report of
24 September 2010, right?

25 R. That's right. I think part of the reason

1 why is because some of his analysis was
2 informed by his cross-examination
3 testimony which occurred afterwards.

4 Q.20 Are you telling us that Mr. Rose's
5 testimony was in addition to his report
6 that these figures and this complete
7 analysis on the investment level was not
8 in his first report of June 2009 and
9 completed maybe with additional details in
10 the response to RNCREQ in July 2010?

11 R. No, what I'm saying is that when he was
12 here at the hearing, I believe he said a
13 few words which enlightened me on some of
14 the purpose of his analysis.

15 Q.21 At page 16 of your report, the first
16 paragraph, you mention:

17 « While it is true
18 that part of the
19 motivation for reform
20 of the planning
21 process under Order
22 890 is to accelerate
23 transmission
24 investment, the Order
25 also places

1 *significant emphasis*
2 *on competitive*
3 *issues. »*

4 So, I understand that you agree that at
5 least one of FERC's motivation to include
6 an Appendix K was to accelerate
7 transmission investments?

8 9H30

9 R. Yes.

10 Q.22 But for you, there's a distinction between
11 lack of investment in the infrastructure
12 and the competitive issues?

13 R. Yes, FERC emphasized two motivations, one
14 was transmission investment, one was
15 discrimination.

16 Q.23 And can you confirm as a matter of fact,
17 a general statement, Mr. Sinclair, that
18 there were, prior to Order 890, under-
19 investment problems in the transmission
20 infrastructure in the U.S. in general?

21 R. Can I confirm that?

22 Q.24 Yes. Is it to your knowledge as an
23 expert?

24 R. Yes, I would agree with that.

25 Q.25 Would you also agree that a lack of

1 sufficient investment in transmission
2 translates in a lack of sufficient
3 transmission infrastructure in the U.S.?

4 R. Yes.

5 Q.26 And that a lack of sufficient transmission
6 infrastructure is a cause of congestion on
7 a system?

8 R. It can be, yes.

9 Q.27 And that congestion may limit the access
10 to the grid and therefore limit
11 competition, do you agree with that?

12 R. Yes.

13 Q.28 So, if there is an increase in the
14 investment and the infrastructure, it
15 would ameliorate the transmission
16 infrastructure, if we do the logical
17 sequence?

18 R. It would ameliorate the competitive
19 problems you mean?

20 Q.29 No. If we reincrease investments in the
21 infrastructure, we ameliorate the
22 transmission infrastructure.

23 R. You mean you improve the infrastructure?

24 Q.30 Yes.

25 R. Yes.

1 Q.31 Yes, that's the right word. And with such
2 improved infrastructures would have the
3 effect of decreasing congestion, this is
4 one of the effects it could have?

5 R. Yes, that's logical.

6 Q.32 And increases access to the grid and to
7 new resources as well?

8 R. Yes. If you increase the capacity of the
9 transmission, you have more competition.

10 Q.33 Yes, it would increase competition, that
11 was the last step of my...

12 I'm still at page 16, the following
13 sentence you mention:

14 « *In particular, the*
15 *exclusion of*
16 *transmission customers*
17 *and other*
18 *stakeholders,*
19 *including regulators,*
20 *from meaningful*
21 *participation and*
22 *planning processes is*
23 *seen by FERC as an*
24 *opportunity for*
25 *transmission owners to*

1 *discriminate against*
2 *their rivals in*
3 *generation markets. »*

4 Do I have to understand, Mr. Sinclair,
5 that what you're saying is that FERC looks
6 at the planning process itself prior to
7 Order 890 as the cause for potential
8 discrimination?

9 R. Yes.

10 Q.34 And that the planning process, what you're
11 saying is that the planning process, the
12 way it was before Order 890, would be this
13 cause of potential discrimination for
14 which FERC is acting?

15 R. Yes.

16 Q.35 So, for you, it is not the, I would call
17 it, deficient state of the grid in many
18 regions of the U.S. that FERC identified
19 as the cause or the incentive for
20 potential discrimination?

21 R. Well, the congestion itself will hinder
22 competition because you just don't have
23 access to the market. But you also have
24 controlled transmission by a transmission
25 provider and control of the planning

1 process by the transmission provider that
2 can be used to discriminate.

3 So, there's two issues, there's the
4 deficient investment which causes
5 constraints and there's control of the
6 transmission grid and the planning process
7 and the associated incentives to use that
8 process to discriminate.

9 Q.36 And so you agree with me that one of the
10 causes was the poor state of the grid in
11 the U.S.?

12 R. Yes.

13 Q.37 And you say there's a second cause for
14 which FERC would have also decided to act
15 which would be in theory there is always
16 a risk, so in the planning process we will
17 act with an Appendix K to cure this risk
18 in theory, right, because there's still a
19 potential?

20 R. There's still a potential risk of
21 discrimination.

22 Q.38 So, this second reason would not be to
23 solve practical problems?

24 R. Oh no, very practical. You would have
25 transmission customers being involved in

1 the planning process who could identify
2 their needs and document these needs,
3 create a process whereby the transmission
4 provider would incorporate the
5 transmission customers' needs and lessen
6 the potential for discrimination.

7 Otherwise, the transmission provider
8 could ignore or actively seek to exclude
9 other transmission customers to favour its
10 affiliate. And there's plenty of quotes
11 in my testimony that goes to that point.

12 Q.39 And you in fact refer to paragraph 422 of
13 FERC Order 890 on page 16?

14 R. Yes, for instance.

15 Q.40 And the example that is given here at
16 paragraph 422 is the disincentive to
17 remedy transmission congestion that is
18 given by FERC, you agree with that?

19 R. Yes, for example. There's also cost
20 allocation issues. Those are the main
21 ones. Mr. Rose has laid out the various
22 forms of discrimination, all of which
23 relate to the congestion.

24 Q.41 I refer you to the bottom of page 16, the
25 paragraph starting with:

1 *« Given these express*
2 *concerns in the Order*
3 *about discriminatory*
4 *conduct. »*

5 And you refer to the paragraph that you
6 cite from FERC:

7 *« HQT's claim that the*
8 *Order 890 planning*
9 *requirement is*
10 *primarily aimed at*
11 *infrastructure*
12 *development is*
13 *misleading. Indeed,*
14 *eliminating and*
15 *preventing*
16 *discriminatory conduct*
17 *is emphasized in the*
18 *Order as much as, if*
19 *not more, than the*
20 *state of grid*
21 *investments*
22 *accordingly*
23 *stimulating*
24 *investments in the*
25 *U.S. transmission*

1 *network is neither the*
2 *sole nor even*
3 *necessarily the*
4 *overriding concern*
5 *being addressed by*
6 *Order 890. »*

7 So here again, we agree that stimulating
8 investments was a concern and you mention
9 that it is not necessarily the sole nor
10 the overriding concern being addressed but
11 it is very important, it's very material,
12 it's not... you agree with that?

13 R. Yes, yes.

14 Q.42 I'm at page 17 now, Mr. Sinclair, on the
15 second paragraph starting by:

16 *« There is also a*
17 *reciprocity issue*
18 *involved if HQT fails*
19 *to develop coordinated*
20 *planning while*
21 *transmission providers*
22 *in the U.S. do so. »*

23 And here you are making an hypothesis:

24 *« Even if it were true*
25 *that the planning*

1 *requirement was*
2 *primarily a matter of*
3 *stimulating*
4 *transmission*
5 *investments in the*
6 *U.S., transmission*
7 *investments have*
8 *critical market*
9 *impacts and provide*
10 *general competitive*
11 *benefits. As a*
12 *result, if reform of*
13 *transmission planning*
14 *in the U.S. makes it*
15 *easier for Québec*
16 *suppliers to sell*
17 *there because of*
18 *increased transmission*
19 *capacity, having in*
20 *place a coordinated*
21 *planning process*
22 *allows HQT to*
23 *reciprocate even if,*
24 *as HQT claims, no*
25 *increase in Québec*

1 *capacity is presently*
2 *needed. »*

3 So, what you're asserting here is that
4 TransÉnergie's affiliates benefit from
5 increased access to U.S. grids because of
6 additional investments?

7 R. Yes.

8 Q.43 And it should reciprocate with the process
9 itself, which is in Appendix K, even if no
10 increase in Québec capacity is needed.
11 This is what you're saying?

12 R. Yes.

13 Q.44 So, having an Appendix K in the United
14 States, and I'm just following the logic
15 of what we just read, has the effect of
16 increasing transmission investments. So,
17 an Appendix K in the U.S. would have in
18 the U.S. the effect of increasing
19 transmission investments?

20 R. Yes, that's part of the intention.

21 Q.45 And that such increase in transmission
22 investments would have, as you state, a
23 critical market impact and would provide
24 general competitive benefits?

25 R. Yes.

- 1 Q.46 And this is because there would be
2 increased access to the transmission grid,
3 right?
- 4 R. Primarily.
- 5 Q.47 And because there is additional
6 infrastructure, there would be increased
7 transmission capacity?
- 8 R. Yes, if the increased capacity is
9 installed and developed in a coordinated
10 manner.
- 11 Q.48 And there would be less congestion, which
12 is a big problem in the United States?
- 13 R. Presumably, yes.
- 14 Q.49 Presumably?
- 15 R. Yes.
- 16 Q.50 Yes. And that is what you mean by provide
17 general competitive benefits as well?
- 18 R. Less congestion but also an integration of
19 competitors that may not face congestion
20 now because they're not integrated into
21 the network. But by allowing them to be
22 part of the process, you integrate more
23 competitors into the grid.
- 24 Q.51 Yes but we are still talking about
25 transmission investments here, the effect

1 of transmission investments.

2 R. Investments, yes.

3 Q.52 Still on page 17 under the question:

4 « *What does HQT claim*
5 *with respect to*
6 *infrastructure*
7 *investments in*
8 *Québec? »*

9 Which is the second part of the page. You
10 quote an extract of TransÉnergie's
11 evidence where it mentions, and it is your
12 translation:

13 « *In Québec, the*
14 *regulatory framework*
15 *ensures that the level*
16 *of investment meets*
17 *the demand and*
18 *maintains excellent*
19 *reliability levels*
20 *while at the same time*
21 *making sure that there*
22 *is no undue*
23 *discrimination towards*
24 *HQT clients. »*

25 And then you mention, I'm at the second

1 line following that quotation:
2 « Prior to open
3 access, many
4 vertically integrated
5 systems achieved
6 admirable levels of
7 reliability. However,
8 this was unrelated to
9 whether competitors
10 were able to gain
11 access to transmission
12 service on a non-
13 discriminatory basis.
14 Reliability provides
15 no indication that a
16 system is conforming
17 to principles of non-
18 discrimination so it
19 is not relevant
20 consideration as to
21 whether or not HQT
22 meets the transmission
23 planning reform under
24 Order 890. »

25 So, you are responding to the part of that

1 reference relating to reliability?

2 R. Yes.

3 Q.53 And you have not made an analysis of the
4 issue of reliability on TransÉnergie's
5 network, Mr. Sinclair, for the purpose of
6 this mandate?

7 R. No.

8 Q.54 No. Do you agree, Mr. Sinclair, that one
9 of the signs of congestion is curtailment
10 of schedule demands or generation at
11 specific units?

12 R. Whether curtailments are an indication of
13 congestion?

14 Q.55 Yes.

15 R. Partly, yes. I mean that's one indicator
16 of congestion.

17 Q.56 So, that was my question, one sign of
18 congestion is curtailment?

19 R. Yes.

20 Q.57 And that curtailment typically is
21 necessary to maintain acceptable
22 reliability levels?

23 R. I think that's primarily the motivation,
24 yes. That's the motivation.

25 Q.58 And that if there were inadequate

1 curtailment in a congestion context, it
2 would impact on reliability and could
3 create outages?

4 R. I'm sorry, can you repeat the question?

5 Q.59 If there were inadequate curtailment in a
6 congestion context, it would impact on
7 reliability and could create outages?

8 R. Oh yes, if you don't curtail schedules
9 when there is a reliability problem, you
10 could have an outage.

11 Q.60 I refer you to page 18 of your report
12 where you refer to the authority of the
13 Régie and approval process for capital
14 projects or investment files. Have you
15 reviewed the Act respecting the Régie de
16 l'Énergie, the relevant sections for these
17 kinds of approvals?

18 R. I think I've seen parts of that Act with
19 respect to this, yes.

20 Q.61 And the regulation respecting the
21 conditions in cases where authorization is
22 required from the Régie de l'Énergie?

23 R. Yes, I've seen that.

24 9H45

25 Q.62 I understand, as you mentioned yesterday,

1 that you have not reviewed the Filing
2 Guidelines or were not provided with the
3 translation of Exhibit HQT-21. I haven't
4 looked at the answer that was just
5 provided to us with regard to the
6 undertakings but this is still what I have
7 to understand?

8 R. Yes, I may not have seen the material
9 referenced in that particular document.
10 But I have seen some discussions in
11 English about this process. I think your
12 own witness provided something like that.

13 Q.63 I would like to refer you to Exhibit HQT-
14 18, document 2. Do you have it, Mr.
15 Sinclair?

16 R. Yes, I have it.

17 Q.64 Okay. So, you mentioned yesterday that
18 you had the occasion to review this
19 exhibit prior to the preparation of your
20 amended report.

21 R. I did, right.

22 Q.65 And could you... do you agree that this is
23 a fair summary of the process for approval
24 of capital projects before the Régie?

25 R. I really can't touch that but I assume

1 that it is fair, right.

2 Q.66 But based on your personal knowledge or
3 understanding of this process, can you
4 confirm?

5 R. I think that this is the document I used
6 to make an understanding of it.

7 Q.67 Your own understanding of it.

8 R. Well, I shouldn't that. I mean, this is
9 one of the documents that I had understood
10 to describe the process which I took as
11 fair.

12 Q.68 Okay. So, there is a... you have not
13 identified anything in this document with
14 which you were not in agreement with based
15 on your previous understanding of this
16 process?

17 R. Right.

18 Q.69 I refer you to page 19 of your report
19 under the question:

20 « *Explain why a*
21 *coordinated planning*
22 *process, like the one*
23 *envisioned in Order*
24 *890, is superior to*
25 *reliance on an*

1 *investment*
2 *authorization process*
3 *under regulatory*
4 *proceedings? »*

5 I understand, Mr. Sinclair, that yesterday
6 you confirmed that you did not modify this
7 section, this whole section of your report
8 in the amended version of September 2010?

9 R. That's correct.

10 Q.70 And this section, you're opining on
11 TransÉnergie's planning process only to
12 compare it to the Appendix K of FERC
13 Order. Is that what I have to understand?

14 R. That's correct.

15 Q.71 Okay. And you did not address the other
16 existing planning measures existing at
17 TransÉnergie to provide your conclusions
18 on this part of your report?

19 R. Which conclusion?

20 Q.72 That the existing measures at TransÉnergie
21 are not superior to - I'm just reading the
22 question how it's phrased - a coordinated
23 planning process as envisioned by FERC
24 Order 890.

25 R. Right. So, when HQT first filed its

1 Tariff, there was a discussion, brief
2 discussion on why the Tariff meet the
3 planning requirements. And what was cited
4 was the Régie authorization process.

5 So, at the time I filed this
6 testimony. The only process I had was the
7 authorization process, the investment
8 authorization process.

9 Now, Mr. Rose later on identified
10 other processes in Québec which I
11 addressed in my presentation the other
12 day, my PowerPoint presentation but not in
13 this testimony.

14 Q.73 Okay. We will come back to that later
15 but, in your amended evidence, that was in
16 September 2010?

17 R. Yes.

18 Q.74 And you had received and reviewed all of
19 this documentation and exhibits prior to
20 take the decision to amend and decide of
21 the content of the amendment. Right?

22 R. That's correct.

23 Q.75 Okay.

24 R. And I did amend my testimony in this
25 topic, in my rebuttal to Mr. Rose.

1 Q.76 Yes.

2 R. In the back of the report.

3 Q.77 We'll come to that, yes, the two last
4 pages of your report.

5 On page 21 of your report, under the
6 question:

7 « *Is there another*
8 *reason litigation*
9 *before Régie is*
10 *inferior to a*
11 *coordinated planning*
12 *process? »*

13 You mention:

14 « *The litigation*
15 *process also separates*
16 *the technical experts*
17 *by requiring*
18 *communication through*
19 *attorneys as opposed*
20 *to direct discussion.*
21 *A coordinated, open*
22 *process would bring*
23 *together directly the*
24 *transmission*
25 *provider's experts*

1 *with the experts of*
2 *the transmission*
3 *customers and other*
4 *stakeholders. »*

5 When you are referring to the transmission
6 provider's experts and the experts of the
7 transmission customers, are you referring
8 to the technical staff or to outside
9 consultants that would be hired to be
10 involved in this Attachment K process?

11 R. I think probably both.

12 Q.78 Both?

13 R. Both.

14 Q.79 And you are referring on page, bottom of
15 page 21 and page 22, to the issue of
16 Information Requests. And you are
17 referring to your client's transmission
18 service request of January 2006. And I am
19 at the bottom, sorry, of page 21, you say:

20 *« In January, 2006,*
21 *NLH made a*
22 *transmission service*
23 *request for*
24 *transmission of long-*
25 *term. »*

1 And then, at the last sentence of this
2 page:

3 « In the absence of
4 transparency in HQT's
5 planning process, NLH,
6 with no guidance or
7 insight from the
8 transmission provider,
9 had to request a range
10 of capacity bookings
11 be studied. A more
12 open and transparent
13 planning process would
14 have enabled NLH to
15 make its transmission
16 service request from a
17 more informed
18 perspective, rather
19 than having to request
20 specific detailed
21 information during the
22 system impact study
23 itself. »

24 At the time you wrote the first report,
25 you were, of course, aware that complaints

1 were filed but the hearing had not been
2 held yet?

3 R. Yes.

4 Q.80 And as confirmed yesterday, you were
5 informed after that, and you were a part
6 of that, there was a hearing and a first
7 and second decision?

8 R. Yes.

9 Q.81 And you are aware that all of the
10 complaints were rejected by the Régie...

11 R. Yes.

12 Q.82 ... or withdrawn by NLH?

13 R. Yes.

14 Q.83 Yes.

15 R. But I don't think that the opening up the
16 system impact study process was an issue
17 before the Régie in that case. This
18 opening up the system impact study
19 process, opening up the planning process
20 is an Order 890 issue. So, I wouldn't
21 expect that the Régie would have
22 considered an open planning... opening up
23 the planning process to rectify a
24 situation associated with system impact
25 studies.

- 1 Q.84 Okay.
- 2 R. But I just illustrate the process.
- 3 Q.85 Okay. So, you are in your report making
4 a link between the specific circumstances
5 of the complaints of NLH...
- 6 R. Yes.
- 7 Q.86 ... and the open planning...
- 8 R. Yes, and if open planning had been in
9 place, for instance, during that
10 circumstances, perhaps the system impact
11 study process would have been a lot more
12 easy to navigate.
- 13 Q.87 But are you suggesting that with an open
14 planning process or with an Appendix K,
15 this would have prevented NLH to file
16 complaints against TransÉnergie? Is that
17 what you're suggesting?
- 18 R. Yes, possibly.
- 19 Q.88 Possibly. And that all of the issues
20 debated before the Régie de l'Énergie in
21 these complaints would have been avoided
22 and treated within meetings or within an
23 Appendix K.
- 24 R. Yes.
- 25 Q.89 That's what you say?

1 R. Yes.

2 Q.90 But you are not suggesting that the
3 existence of an Appendix K would have
4 changed the result of the complaints
5 before the Régie, right?

6 R. Well, I think the circumstances that led
7 to the complaints may have been
8 eliminated, may have been addressed in a
9 non-discriminatory manner.

10 Q.91 I would like to refer you to page 40 of
11 your report. From the bottom of page 40
12 to page 42, this is the response to the
13 amended evidence to Mr. Rose's testimony
14 and answers to RNCREQ. Right?

15 R. Yes.

16 Q.92 Okay. And when we read this section, is
17 it fair to understand that it covers
18 really two subjects. You're referring to
19 your reading of Mr. Rose's evidence and
20 concluding that he does not develop on the
21 subject of discrimination. This is...

22 R. That's correct.

23 Q.93 Okay. This is one... this is your
24 interpretation. And the other issue
25 you're addressing is one aspect of Mr.

1 Rose's evidence on the relation between
2 congestion and discrimination.

3 R. Yes.

4 Q.94 On page 41 of the report, you write, you
5 quote Mr. Rose in an extract starting with
6 « *A key aspect* ». So he mentions:

7 « *A key aspect of*
8 *potential*
9 *discrimination*
10 *discussed in Order 890*
11 *is the existence of*
12 *"significant and*
13 *recurring congestion"*.
14 *Thus, it is necessary*
15 *to understand whether*
16 *there is "significant*
17 *and recurring*
18 *congestion" within the*
19 *TransÉnergie*
20 *Interconnection when*
21 *assessing the*
22 *potential for*
23 *discrimination and the*
24 *type of coordinated,*
25 *open and transparent*

1 *planning needed. »*

2 And your comment is the following
3 sentence:

4 *« In essence, the*
5 *testimony is asserting*
6 *that a lack of*
7 *congestion translates*
8 *to a lack of*
9 *discrimination. »*

10 And you say:

11 *« I do not agree. »*

12 And you continue:

13 *« Discrimination can*
14 *arise even when*
15 *congestion is not*
16 *present. »*

17 So, what you understood from Mr. Rose's
18 testimony is that without congestion,
19 there is no possibility for discrimination
20 under any circumstances. This is what you
21 understood?

22 R. Initially.

23 Q.95 And you suggest that because there remains
24 a possibility that undue discrimination
25 takes place, even if there is no

1 congestion, we need an Appendix K to
2 prevent that.

3 R. To prevent, to address discrimination,
4 yes.

5 Q.96 But are you also asserting that the
6 inclusion of an Appendix K would
7 completely prevent under discrimination?

8 R. No, I don't think I would say that. I
9 think it was designed in part to address
10 discriminatory conduct, and it would be a
11 way to make it less likely and less
12 severe.

13 Me MARIE-CHRISTINE HIVON :

14 Monsieur le Président, si c'était possible d'avoir
15 peut-être une pause de quelques minutes pour
16 discuter avec mes clients puis on pourrait revenir
17 dans une dizaine de minutes si vous le permettez.

18 LE PRÉSIDENT :

19 Oui, en fait, nous allons prendre la pause jusqu'à
20 10 h 30 et par la suite la Régie sera prête, si vous
21 avez terminé avec vos questions.

22 Me MARIE-CHRISTINE HIVON :

23 Compléter si c'est nécessaire, merci.

24 Me ANDRÉ TURMEL :

25 Excusez-moi, donc juste pour savoir... donc, on

1 prend une pause de 35 minutes, je n'ai pas de
2 difficulté, il est 9 h 55. Est-ce que ma consœur
3 prévoit en avoir encore... je ne sais pas, juste une
4 petite idée pour avoir une idée à ce qu'elle en a
5 pour une heure après la pause ou une demi-heure
6 environ? Juste avoir un ordre de grandeur, là.

7 Me MARIE-CHRISTINE HIVON :

8 Si j'ai d'autres questions, Monsieur le Président,
9 ça ne devrait pas être très long.

10 Me ANDRÉ TURMEL :

11 Parfait, merci.

12 LE PRÉSIDENT :

13 Merci.

14 SUSPENSION DE L'AUDIENCE

15 10H31

16 REPRISE DE L'AUDIENCE

17 LA GREFFIÈRE :

18 Veuillez prendre place, s'il vous plaît.

19 LE PRÉSIDENT :

20 Reprise de l'audience. Maître Hivon.

21 Me MARIE-CHRISTINE HIVON :

22 Monsieur le Président, je serai brève. J'ai
23 quelques questions additionnelles, en fait, deux
24 questions à monsieur Sinclair.

25 Q.97 Mr. Sinclair, I'll have very few questions

1 for you in addition to my questions of
2 this morning.

3 With respect to the investment of
4 capital projects filed before the Régie in
5 this process, is it to your knowledge that
6 frequently there are technical meetings
7 held at the beginning of the process
8 before the Régie to discuss the technical
9 aspects of the files? Did you know that?

10 R. I think I saw that, yes.

11 Q.98 You saw that. And that in these meetings,
12 engineers from TransÉnergie, engineers
13 from the Régie and the interveners
14 exchange and participate in this technical
15 meeting to go through the technical
16 aspects of the file in question.

17 R. Okay.

18 Q.99 Did you know that?

19 R. I think I... yes, I...

20 Q.100 You think you do?

21 R. I remember some reference to that process,
22 yes.

23 Q.101 Okay. With respect to the subject of
24 credit worthiness, I will have one
25 question for you. Were you present at the

1 Régie during the hearing of TransÉnergie's
2 panel on this subject that took place on
3 October 27th, 2010?

4 R. I was not.

5 Q.102 You were not. And were you provided with
6 a translation of the testimony in chief
7 and the cross-examination of these
8 witnesses?

9 R. When you refer to the testimony in chief,
10 are you referring to HQT-01?

11 Q.103 Presentation. No, I'm referring to the
12 testimony of these witnesses on the issue
13 of credit worthiness when they were...

14 R. No, I was not.

15 Q.104 You were not provided with a translation.
16 So, you have no knowledge of the content
17 of the testimony of Mrs. Marie-Claude
18 Lalande and Mr. Sylvain Clermont, nor of
19 their cross-examination by maître Turmel
20 or other interveners or the Régie on the
21 subject?

22 R. I did not review it.

23 Q.105 Okay, thank you. Alors, je n'ai pas
24 d'autres questions pour monsieur Sinclair,
25 mais je crois que maître Dunberry en a

1 suite à l'étude des engagements.

2 LE PRÉSIDENT :

3 Maître Dunberry.

4 CONTRE-INTERROGÉ PAR Me ÉRIC DUNBERRY :

5 Oui, Monsieur le Président. Alors, ce sera
6 également très bref. Sur réception des engagements
7 ce matin, en fait, de certaines des réponses aux
8 engagements, je pensais profiter de la présence de
9 monsieur Sinclair pour aborder une question ou deux
10 sur ça.

11 En fait, c'est en relation...

12 Q.106 Mr. Sinclair, I was just advising the
13 Régie that I was going to ask you a
14 question or two on one of the answers that
15 was provided this morning to some of the
16 undertakings.

17 Starting with Undertaking number 1,
18 we were provided with a copy of a work
19 task order and I would ask you to take a
20 copy of that document if you don't mind.
21 I'm not sure you have one but we can
22 certainly provide you with a copy of that
23 document.

24 Monsieur le Président, je pense que
25 vous l'avez reçu également, oui. Voilà.

1 Now, the question that was asked
2 Undertaking number 1 was to provide a copy
3 of all written exchanges between yourself
4 and your client NLH concerning or defining
5 your mandate.

6 And what I have received this morning
7 is a copy of an accounting document, the
8 work task order dated April 12, 2011 and
9 my understanding is that this is the only
10 document, and by the word « document », we
11 obviously mean e-mails, letters, documents
12 emanating from Potomac Economics defining
13 your mandate.

14 Is this your recollection that there
15 is only this document that defines your
16 mandate? Because your report was filed in
17 June 2009, the first draft, and I'm sure
18 you didn't wait for two years to be paid,
19 so I assume there was something else
20 between May 2009 and April 2011. Is that
21 possible?

22 R. Yes. If you see on the second page, which
23 is the first page of the task order, you
24 see a schedule May 1st, 2009 to July 31st,
25 2011. So, actually what you're looking at

1 here is just an extension of the budget on
2 the task order but this would represent
3 the original task order that I had
4 received.

5 Q.107 So, for purposes of preparing your June
6 2009 report, you had to wait for two years
7 to get a work task order?

8 R. No, this work task order here... yes,
9 apparently... apparently the wrong one was
10 presented but this...

11 Q.108 I'm sorry, the wrong one, the wrong what?

12 R. See, this was prepared April 2011 but the
13 exact same one was.. has the date of May
14 2009 or March 2009 and so actually, this
15 is the wrong task order.

16 Q.109 Okay, so we have the wrong document.

17 R. Yes, but we can get to the document but I
18 can tell you it says the same thing except
19 for the dates.

20 Q.110 Okay.

21 R. It's just because, you know, this hearing
22 had been extended several times and we had
23 to extend the task order several times but
24 it's the same task order with the same
25 scope.

1 Q.111 Okay. So, there is one dated March 2009?

2 R. Yes, there should be one around... dated
3 March 2009.

4 Q.112 Okay. But your report was filed in June
5 2009. So, there is one which pre-dates
6 your report?

7 R. Yes.

8 Q.113 And there would be a second one and this
9 one is dated April the 6th, 2011. So,
10 this is the second one?

11 R. Yes, this is revision number 2. Actually,
12 there is a third one.

13 Q.114 Okay. So, we would like, because this is
14 an undertaking and this is a serious
15 undertaking, so we would like you to
16 provide us with copies of all written
17 exchanges. So, that, I guess, includes
18 the other two work task orders, so we
19 would ask you to complete the undertaking
20 that was given.

21 Me ANDRÉ TURMEL :

22 Monsieur le Président, avec votre permission, juste
23 pour bien comprendre ce que mon confrère demande.
24 J'ai compris de la réponse du docteur Sinclair,
25 c'est que ce document-là, un qui émane de NLH, est

1 un document qui a évolué avec la, je dirais,
2 l'amplitude de la durée de ce mandat.

3 Donc, dans les faits, c'est toujours le
4 même document qu'on a remis à jour, notamment, vous
5 le savez, à cause des budgets. C'est un work task
6 order. Donc, je ne sais pas s'il est vraiment
7 nécessaire, écoutez, mais j'essaie de voir où veut
8 aller mon confrère.

9 Évidemment, il ne lui sera pas remis des
10 aspects relatifs au budget, au coût mais je ne pense
11 pas que c'est ça qu'il demande non plus mais, moi,
12 je pense que ce qui a été fourni, ma compréhension,
13 c'est que ce que j'ai compris de ce que le client a
14 donné, c'est un seul document mais qui a évolué.
15 Alors, c'est sûr que si on prend l'image du document
16 au mois de, je ne sais pas, de mai 2009, c'est le
17 même document avec probablement si vous allez voir
18 starting 1st May, 2009 mais due date, à ce moment-
19 là, ça devait être certainement il y a un an plus
20 tard parce que personne ne s'attendait à ce que nous
21 soyons encore ici en 2011.

22 Alors, un peu plus tard, le mandat a
23 évolué, d'ailleurs à la demande de HQT. Bref, c'est
24 un mandat en continu. C'est le même document qui a
25 évolué. Et, là, ce que mon confrère demande, c'est

1 une page imprimée du même document mais à des dates
2 différentes.

3 Je ne sais pas si cela est vraiment
4 pertinent parce que le mandat qu'il recherche, il
5 est bel et bien décrit :

6 « *Scope of work, to*
7 *provide written and*
8 *oral expert testimony*
9 *and advise in support*
10 *of Nalcor intervention*
11 *at HQT 890 rate*
12 *hearing.* »

13 Ça, c'est le point de départ. Et vous avez, à la
14 toute fin, dans le rapport amendé de la preuve du
15 docteur Sinclair, vous avez là également le mandat
16 tel qu'il a été rédigé et écrit par le docteur
17 Sinclair.

18 Alors, entre le début et ce qui est rédigé
19 dans la preuve, vous avez, je pense, clairement
20 explicité le mandat.

21 Alors, je ne sais pas, là, s'il est
22 vraiment pertinent d'aller rechercher les pages
23 imprimées. Je vous sou mets que je pense que mon
24 confrère a tout ce qu'il veut pour faire ce qu'il a
25 à représenter.

1 Me ÉRIC DUNBERRY :

2 En fait, plusieurs commentaires, Monsieur le
3 Président. Le premier commentaire, c'est, je
4 présume que maître Turmel n'a pas copie des trois
5 documents dont il parle parce qu'à ce moment-là
6 j'aurais pris pour acquis que nous en aurions reçu
7 communication, premièrement.

8 Alors, maître Turmel n'est pas en mesure
9 de faire des commentaires sur le contenu des
10 documents qu'il n'a pas vus, quant à savoir s'ils
11 sont identiques ou non et s'il y a des variations
12 utiles et pertinentes, premier commentaire.

13 Deuxième commentaire, Monsieur le
14 Président, quand on prend un engagement, on le prend
15 sous serment et on le prend pour y donner suite. Et
16 lorsque l'engagement a été ordonné et que le débat
17 d'objections, s'il y en avait eu, il n'y en pas eu
18 ici, est réglé, le témoin doit s'y conformer. Il
19 n'y a plus de négociations possibles avec les
20 parties sur la pertinence.

21 L'engagement a été pris et il était clair:

22 « *Provide a copy of*
23 *all written*
24 *exchanges.* »

25 J'ai reçu ce matin un document qui, à sa face même,

1 a d'abord été caviardé, sous réserve des
2 commentaires de maître Turmel, si vous allez au
3 deuxième document, la deuxième page. Il nous
4 semble, à l'oeil, que ce document a été caviardé.
5 Monsieur le Président, quand on caviarde un document
6 suivant les règles bien établies par d'ailleurs
7 certains tribunaux, on fait le caviardage de façon
8 visible. On cache certaines choses mais on les
9 cache de façon à ce que la partie qui reçoit le
10 document le sache. Ce n'est pas une job, pour
11 reprendre l'expression du juge Picard, ce n'est pas
12 une job de liquid paper.

13 Et on voit ici au deuxième document, là,
14 sauf erreur, il semble y avoir des choses qui ont
15 été caviardées sans qu'on puisse vraiment savoir si
16 oui ou non ça a été caviardé mais regardant le
17 document, il est possible qu'il l'ait été, je pose
18 la question.

19 Mais on reviendra sur la question du
20 caviardage tout à l'heure.

21 Mon premier point, c'est j'ai demandé au
22 témoin et il n'y a pas eu d'objection, il y a eu un
23 engagement, de nous fournir les documents. Le
24 témoin a rapidement consenti à nous les communiquer,
25 je pense. Il nous dit qu'ils sont sans doute de la

1 même nature. Il y a peut-être des éléments de
2 répétition, il y a peut-être des éléments
3 additionnels.

4 Mais l'engagement a été pris, l'engagement
5 a été souscrit et ce que maître Turmel demande ce
6 matin, c'est de ne pas satisfaire à l'engagement qui
7 a été donné. Je vous sou mets que ce n'est pas la
8 façon de faire. Je vous sou mets également que ce
9 n'est pas à lui de décider, c'est au Tribunal de
10 décider. Et le Tribunal a permis l'engagement.

11 Et il ne peut par la suite déclarer ce
12 qui, selon lui, est suffisant parce qu'à ce moment-
13 là je devrai m'interroger sur la suffisance des 15
14 réponses aux 15 questions si maître Turmel se cro it
15 autorisé d'autoriser, se cro it autorisé
16 d'interpréter les engagements lorsqu'ils sont
17 formulés aussi clairement que: Provide all written
18 exchanges. Il y en aurait trois.

19 Et j'ai d'autres questions pour le témoin
20 en passant, Monsieur le Président, sur ces
21 questions-là.

22 Me ANDRÉ TURMEL :

23 Monsieur le Président, avec votre permission.
24 Premièrement, pour rassurer mon collègue, non, je
25 n'ai pas vu d'autres documents que celui qui vous

1 est déposé ce matin. J'entends ce qu'a mentionné le
2 docteur Sinclair ce matin, premièrement. Alors, je
3 peux le rassurer.

4 Deuxièmement, revenons-en à la pertinence.
5 Il a obtenu le mandat et il a, par explication qui
6 lui a été donnée, obtenu la réponse que ce mandat-là
7 a été donné initialement et cette feuille, de ce que
8 j'ai compris, semble avoir évoluée mais c'est
9 toujours le même document.

10 Alors, la pertinence que je vous soulève,
11 c'est est-il bien pertinent de voir à tous les
12 stades, parce que je comprends c'est ça qu'il
13 recherche, à tous les stades, à toutes les époques,
14 si le scope of work qui est là est le même. Alors,
15 je m'interroge, là. On l'a, il l'a fait son rapport
16 à la toute fin. J'essaie de voir vraiment la
17 pertinence dans le dossier, ne serait-ce que pour
18 peut-être grossir un événement qui est, somme toute,
19 mineur. Et, là, je ne comprends pas ce qu'il me dit
20 quand il dit: « La dernière page aurait été
21 caviardée. »

22 Écoutez, ce sont des données... des
23 données, comment dire, qui m'apparaissent à première
24 vue d'ordre budgétaire. On est à des mille lieux du
25 mandat, ma compréhension, alors nulle part il a été

1 clairement demandé, puis évidemment on se sera
2 objecté, qu'on demandait le mandat. Le mandat
3 apparaîtrait à la page 2. On a simplement mis par souci
4 de transparence le fait qu'il y avait ce tableau-là
5 mais je pense que... j'imagine qu'on a... il a été
6 omis mais je ne sais pas, moi, j'ai pris
7 connaissance de ce document-là en même temps. Ce
8 sont des - comment dire? - des données budgétaires,
9 de coûts. Ça n'a aucun rapport avec le mandat.

10 Alors, ses commentaires de liquid paper,
11 je pense qu'il pourra les retirer puis ça m'apparaît
12 totalement inapproprié. Il veut peut-être, en toute
13 fin de cause, tenter de grossir quelque chose qui ne
14 l'est pas mais, somme toute, ce que je vous dis,
15 c'est que ça ne m'apparaît pas pertinent ce qu'il
16 vous dit.

17 LE PRÉSIDENT :

18 Un instant. Alors, la Régie permet le dépôt des
19 documents complémentaires selon la question formulée
20 par le procureur. Maître Dunberry.

21 Me ÉRIC DUNBERRY

22 Merci, Monsieur le Président.

23 Q.115 So, Mr. Sinclair, we would ask you by way
24 of actually... it's not a new undertaking.
25 We would not ask you to, by way of a new

1 undertaking, we would simply ask you to
2 complete your answer to Undertaking number
3 1 taken on May 2nd, 2011 by providing all
4 written exchanges and that would include
5 the additional two documents that you
6 referred to as well as any other documents
7 including e-mails, including letters or
8 other documents, be it in a hard format or
9 in an electronic format defining your
10 mandate. It is essentially the same
11 question.

12 ENGAGEMENT #1 RÉVISÉ:

13 Provide a copy of all written exchanges between Dr.
14 Sinclair and NLH defining Dr. Sinclair's mandate in
15 this hearing, including the additional two documents
16 referred to as well as any other documents including
17 e-mails, including letters or other documents, be it
18 in a hard format or in an electronic format defining
19 the mandate.

20 Me ÉRIC DUNBERRY :

21 Q.116 Now, turning on page 2 of that document,
22 Mr. Sinclair, we see the names Robert
23 Sinclair and David Patton. Could you tell
24 us who is Mr. David Patton? I think you
25 referred to his name yesterday in the

1 context of a separate report. Was Mr.
2 Patton involved in the preparation of the
3 report that you filed, and you and I and
4 that maître Hivon discussed with you as
5 well?

6 R. David Patton is the President of Potomac
7 Economics and he reviews work product that
8 is sent out of the company.

9 Q.117 So, did he review your report before it
10 was actually filed in June 2009 and then
11 revised in September 2010?

12 R. Yes.

13 Q.118 Okay. But did he draft any of the
14 sections? Did he adjust any of the
15 contents?

16 R. No.

17 Q.119 So, his review was of what nature?

18 R. To make sure that... he wants to know the
19 work product that goes out the door.

20 10H48

21 Q.120 One of the questions that I asked
22 yesterday or the day before was whether
23 you were the sole author of that report.
24 Your answer was yes.

25 R. Yes.

1 Q.121 So, did he change anything in your report?

2 R. No.

3 Q.122 So, his review, after the fact, was simply
4 to make sure he was in agreement with the
5 content of the report?

6 R. I think he likes to know what's going out
7 the door. I don't think he necessarily
8 wants to make sure he's in agreement.

9 Q.123 Okay. Now, before asking you anymore
10 questions on this document, did you remove
11 any information, by I mean remove, I mean
12 mask any of the information on that second
13 page? Is there any information that was
14 masked?

15 R. I didn't do anything to this page.

16 Q.124 Okay. But when you look at that document,
17 it calls for information in terms of start
18 date, end date, number of hours spent and
19 I'm not asking any questions on your
20 hourly rates, don't worry, we're not going
21 to go there. I have no interest in
22 knowing your hourly rates or your
23 financial arrangements with NLH. That is
24 not something I'm looking for. I just
25 want to know whether there was anything

1 that was - the French word we use all the
2 time here is caviarder which is... what's
3 the translation for that? Redacted.

4 Was there any information redacted?
5 Because when I look at that, it looks like
6 the lines are broken lines and there are
7 like white areas on the document. Are you
8 aware of the original, whether there is
9 information or whether there is no
10 information in addition?

11 R. These documents were sent to me by hard
12 copy in the mail. And when you asked for
13 this undertaking the other day, I simply
14 asked Johanna Harris who sent them to me
15 whether she had them electronically on her
16 computer and she did. So, she produced
17 this instead of having me go back to
18 Fairfax and sending you back a hard copy.

19 Q.125 Okay. But, to your knowledge, because you
20 have a copy of that document at your
21 office.

22 R. Yes.

23 Q.126 Okay. Now, the original document or the
24 other two documents that you have in your
25 office, do they contain data that do not

1 appear on this document?

2 R. I don't know.

3 Q.127 You don't know. Okay. So, I would ask
4 you to verify, and I'm not asking for the
5 data, I'm simply asking whether the
6 document that was produced - and let me be
7 very clear, Monsieur le Président, that
8 may actually resolve the objection that is
9 about to be presented - I am currently not
10 asking for the data. I'm simply asking
11 whether the document that was presented to
12 the Régie is a redacted document and
13 whether the original document contains
14 information that has been redacted because
15 normally when something is redacted,
16 everybody is made aware of the fact that
17 some of the information was redacted and
18 then there may be or may not be a
19 discussion about whether it's relevant or
20 not.

21 But my question right now is whether
22 the information was or was not redacted.
23 That was my only point at this time.

24 Me ANDRÉ TURMEL :

25 Alors, je vais m'objecter à la demande telle que

1 formulée. Quand on regarde cette deuxième page-là,
2 je vous rappelle que l'engagement portait sur le
3 mandat et la description du mandat. Regardez le
4 titre de la page de ce tableau, c'est un tableau
5 Excel. Work task order, cost time and resource
6 estimate.

7 J'essaie de comprendre, et là, j'en suis
8 à la pertinence de ce qui est demandé, là. Sur le
9 mandat, la description du mandat, je pense que O.K.,
10 on s'entend mais sur ce tableau... ma compréhension,
11 c'est que ce tableau-là a été fourni justement pour
12 indiquer que ce document-là est fourni
13 habituellement avec la page qui le précède mais ce
14 sont des données purement budgétaires de coûts, de
15 prix, de ressources. Je ne sais pas où s'en va mon
16 confrère avec ça, ne serait-ce que de vouloir faire
17 dériver le débat mais autrement, j'en suis à la
18 pertinence. Cette demande apparaît totalement non
19 pertinente dans le dossier.

20 Il a l'information qu'il souhaite à la
21 page 1. Il aura vraisemblablement les pages que
22 vous avez, qu'il a demandées, les mêmes pages mais
23 pour les périodes différentes. Le volet purement
24 budgétaire apparaît totalement démesuré, non
25 pertinent et il ouvre une pente dangereuse parce que

1 nous allons, donc, nous interroger nous aussi à
2 l'ensemble des coûts, des mandats relativement aux
3 experts que HQT...

4 Et ce type de questions-là, Monsieur le
5 Président, ont été réglées il y a très longtemps et
6 personne.. au début, il y a 10 ans, ces questions-là
7 se sont posées et rapidement la Régie a fait en
8 sorte de dire que ces données-là n'étaient pas
9 pertinentes.

10 Tous les coûts associés à la défense de
11 HQT par ses procureurs, tous les coûts associés à
12 ses nombreux experts, experts américains, on n'est
13 pas embarqué là-dedans. On reste dans le mandat,
14 dans la description du mandat.

15 Là, il ouvre une porte qui m'apparaît
16 totalement saugrenue, non pertinente et qui n'a rien
17 à voir avec l'ensemble des quatre jours qu'on vient
18 de discuter. Alors, je m'objecte vraiment, là, avec
19 toute la force que je peux vous présenter ce matin.
20 C'est totalement inacceptable. Ça n'a aucun
21 rapport.

22 LE PRÉSIDENT :

23 Maître Dunberry?

24 Me ÉRIC DUNBERRY :

25 Bien, le point de départ, Monsieur le Président,

1 c'est que ce document-là il m'a été communiqué ce
2 matin comme à la Régie.

3 Alors, le document il nous est offert. Le
4 point de départ de ça, c'est que nous avons demandé
5 des documents pertinents à la définition du mandat.
6 Mon confrère s'objecte à la pertinence d'une partie
7 du document qu'il a lui, lui, son client, communiqué
8 lui-même ce matin en réponse à la question.

9 Alors, le document il ne vient de nulle
10 part ailleurs que de NLH. Alors, le point de
11 départ, c'est que si on n'avait pas voulu nous le
12 donner, il s'agissait simplement de ne pas nous le
13 donner et de dire pourquoi on n'y avait pas droit.
14 Mais, là, il est au dossier. C'est le document qui
15 est présenté par NLH. Alors, on peut difficilement
16 dire que le document n'est pas pertinent à 9 h 02...
17 pardon, dire qu'il est pertinent à 9 h 02 et dire
18 qu'il n'est pas pertinent à 10 h 56.

19 Il est celui qui a lui-même introduit ce
20 document, d'une part.

21 D'autre part, je pose la question,
22 Monsieur le Président, et j'ai été très précis, je
23 n'ai pas demandé de données financières. Alors, mon
24 confrère s'objectait à une question qui n'a pas été
25 posée. Mais je pense que lorsque la Régie reçoit un

1 document en réponse à une question, elle doit savoir
2 si ce document a été oui ou non modifié.

3 Alors, maître Turmel, au nom de NLH,
4 produit un document en réponse à un engagement et la
5 question c'est de savoir est-ce que ce document-là
6 a été modifié et modifié sans être présenté comme un
7 document modifié?

8 Alors, est-ce que oui ou non ce document-
9 là, et quand on le regarde, la question n'est pas
10 sans sérieux, est-ce que oui ou non ce document-là
11 a été modifié?

12 Si la réponse c'est non, ce sera la fin de
13 la question. Si la réponse c'est oui, il a été
14 modifié, bien, on pourra s'interroger sur la nature
15 des modifications. Encore une fois, je n'ai pas, et
16 je l'annonce tout de suite, je n'ai pas d'intérêt
17 pour les questions financières. Mais si, par
18 exemple, il y avait un troisième membre de l'équipe
19 dont le nom apparaît et qui n'apparaît pas, on voit
20 monsieur Sinclair, on voit monsieur Patton? Est-ce
21 qu'il y en aurait un troisième?

22 Si monsieur Patton a consacré 20 heures à
23 ce dossier-là, peut-être que son implication
24 mériterait qu'on connaisse davantage la nature de
25 son intervention. Je ne le sais pas. Je ne veux

1 pas spéculer. Je n'ai pas à spéculer.

2 Mais le fondement de l'affaire, c'est
3 simplement ceci, nous avons demandé une question
4 simple qui est toujours permise, c'est d'avoir une
5 copie du mandat pour savoir à quelle question la
6 réponse au rapport s'adressait.

7 Deuxièmement, maître Turmel communique un
8 document et la deuxième page avec le document, on
9 apprend qu'il y en a trois et non pas un seul.
10 Déjà, je suis étonné. Et je suis également étonné
11 qu'on s'objecte à la simple question de savoir si le
12 document a été modifié. Et s'il a été modifié, on
13 pourra demander quelle est la nature des
14 modifications? Mais je ne demande pas et je ne
15 demanderai pas dans trois questions ou dans trois
16 minutes les données financières. Je veux simplement
17 connaître la nature de la modification du document.

18 Et il me semble tout à fait légitime que
19 lorsqu'un document est modifié, que le Tribunal en
20 soit avisé parce qu'il est pour le moins légitime de
21 connaître la nature des modifications d'un document
22 qui aurait été fait.

23 LE PRÉSIDENT :

24 Un instant. Alors, concernant l'objection, la Régie
25 retient l'objection du procureur de Newfoundland

1 Labrador Hydro. L'information recherchée n'apparaît
2 pas nécessaire à la Régie pour la décision qu'elle
3 a à rendre dans le présent dossier. La Régie a
4 permis beaucoup de questions sur les dates
5 auxquelles les témoins ont pris connaissance de
6 différents documents. Nous sommes allés très loin.
7 La Régie pense qu'elle a assez de matière concernant
8 ces questions pour administrer le présent dossier.

9 Me ÉRIC DUNBERRY :

10 Merci, Monsieur le Président. Alors, quant aux
11 autres engagements, nous allons revoir la liste et
12 aviser notre confrère s'il y avait des questions
13 additionnelles qui devaient se poser. Merci.

14 LE PRÉSIDENT :

15 Merci, Maître Dunberry.

16 Alors, pour la Régie, madame Gervais.

17 INTERROGÉ PAR Mme LUCIE GERVAIS :

18 Q.128 Good morning, Dr. Sinclair.

19 R. Good morning.

20 Q.129 I have, well, a few questions, I'm just
21 trying to have a clear image of your
22 position. First, I should refer you to
23 two documents, it might be more later
24 but... your presentation, your PowerPoint
25 presentation, on page 23, that was one of

1 your conclusions.

2 R. Okay.

3 Q.130 And to that, I don't know if you have...
4 do you have copies of the transcript of
5 yesterday's hearing?

6 R. I do.

7 Q.131 Okay. I would take you on page 29.

8 R. Okay.

9 Q.132 And I might as well refer to, you may as
10 well open it now, document HQT-8, document
11 1, it's on page 17, that is the table, the
12 priority table.

13 R. Okay. Let me open it again, I don't have
14 it handy. Oh, I'm sorry, I do have it
15 right here. Okay.

16 Q.133 So, I would start by the transcript. So,
17 in the transcript, if I refer you to
18 question 37 on page 29, I'll reread it
19 just for the transcript and to have it in
20 mind. So, maître Dunberry was asking:

21 « So, what you're
22 saying is basically
23 you're in agreement
24 with everything else
25 except that in the

1 *equation you would*
2 *like to remove that*
3 *reference? »*

4 And you were referring to the non-firm.
5 Your answer was:

6 *« Yes, it should be*
7 *moved to the non-firm*
8 *equation, ATC non-*
9 *firm. »*

10 Okay? We should probably refer as well to
11 page 199 of the OATT...

12 R. Oh yes.

13 Q.134 ... Schedule C-1. Or Appendix. Well, the
14 C-1 whatever. So, now I'm going to bring
15 you to page 23 of your presentation where
16 you were saying:

17 *« Régie should require*
18 *HQT to revise the*
19 *proposed Tariff as*
20 *follows: QCRND firm*
21 *and QCRND non-firm*
22 *should be eliminated.*
23 *S single designation*
24 *should be used to*
25 *represent reservation*

1 *from non-designated*
2 *resources. »*

3 And before I ask the question I'm going to
4 refer you to HQT-8, document 1, which were
5 the answers, the responses to the Régie
6 IRs, on page 17, where we see the priority
7 table.

8 R. Okay.

9 Q.135 And I understand that like you had said
10 you were okay with the priorities
11 yesterday in the cross-examination. So I
12 understand that the QCRND firm would be
13 priority number 3?

14 R. Yes.

15 Q.136 And QCRND non-firm would be priority
16 number 6, right?

17 R. That's what the table says, right.

18 Q.137 Okay. If you combine the two as one
19 QCRND, how do you deal with the two
20 priorities? That's my first question.

21 R. Hum. Well, if you were to remove... one
22 of my recommendations is also to remove
23 the ability of the generator to use Part
24 IV, which is the native load transmission
25 service. So, if you remove that ability,

1 then QCRND firm and QCRND non-firm would
2 be the same. They would just be a use of
3 the system for non-designated resources.
4 And that would all be put in there to
5 priority number 3.

6 Q.138 So, you would remove priority number 4, 5
7 and 6, is that what I... I just want to
8 make sure I understand what you're telling
9 me. Essentially, 6 would be in number 3?

10 R. 6 would move to number 3.

11 Q.139 And in the number 3, there's also, and
12 I'll read in French so that it will be
13 translated because I couldn't come up with
14 a perfect translation in this, the note
15 number 3, note 3 at the bottom of the
16 table says:

17 « *Incluant le service*
18 *ferme conditionnel*
19 *lorsque les heures ou*
20 *les conditions de*
21 *réseau de réduction*
22 *prioritaire*
23 *préalablement*
24 *déterminées*
25 *s'appliquent. »*

- 1 So there would be, when there's firm
2 conditional, that would be curtailment.
3 How would that link with the priority
4 number 3 and the non-firm and the firm?
5 Like how would you rate those?
- 6 R. I have to apologize, I've been looking at
7 table number 4 thinking that we would be
8 just dealing with the number 3 priority.
9 So, I have to find the table number 15
10 which we discussed, yes.
- 11 Q.140 Yes, it's table number 15.1.
- 12 R. Under that was the same as the other one.
13 Okay, now I have it.
- 14 Q.141 So, I'm referring to note number 3 at the
15 bottom.
- 16 R. Okay. So, this would include also the
17 secondary service, so that would stay the
18 same.
- 19 Q.142 So, what would be the priority between the
20 firm, the QCRND firm, the QCRND non-firm
21 and the...
- 22 R. Secondary service?
- 23 Q.143 ... secondary service?
- 24 R. So, if you would eliminate the ability of
25 the generator to use Part IV, which would

1 modify QCRND non-firm, then QCRND non-firm
2 and QCRND firm would be indistinguishable
3 and so they would go into 3. So they
4 would have, according to the note, they
5 would have the same priority as secondary.
6 So, it would depend on who got to the
7 queue first, who has the longer duration
8 request, it would be the tie-breaker. If
9 there's a lack of ATC, then it would
10 depend on term of service and who got to
11 the queue first. But they would all have
12 the same priority.

13 Q.144 What is your understanding of the QCRND
14 firm, the use of it?

15 R. My understanding is that it's
16 appropriately introduced as far as
17 allowing non-designated resources to serve
18 native load. The only issue I have with
19 it is that it is included in the C-1
20 equations in the wrong spot. Instead of
21 using up firm ATC, it should use up non-
22 firm ATC. But have a higher priority than
23 a point-to-point non-firm.

24 So, you see, so you have the ATC firm
25 equation which can be reduced. So, if I

1 go out to the market looking for firm
2 service, some of it may be used up because
3 of a QCRND firm use of the system. But if
4 I'm looking for, for instance, a point-to-
5 point firm reservation, I should be able
6 to use capacity that's already being used
7 by non-designated resources.

8 But the way the equation is set up,
9 ATC firm is reduced if the distributor is
10 using non-designated resources to serve
11 its load where a firm reservation should
12 be able to get priority over that. But in
13 the equation the QCRND firm is reducing
14 the firm ATC.

15 Q.145 Yes and it is non-designated... well, I
16 don't want to argue, I want your opinion
17 on this but... okay, then I'll bring you
18 to the formula then, we'll go to page 199
19 of the OATT.

20 R. Okay.

21 Q.146 So, it's HQT-4, document 1. And it's the
22 Attachment C-1.

23 R. Yes.

24 Q.147 On page 199.

25 R. Page 199, right.

1 Q.148 So, we see the formula for the scheduling
2 horizon and real-time horizon.

3 R. Right. They're both basically the same,
4 yes.

5 Q.149 Yes. I would like you to walk me through
6 that essentially on the ATC firm. Where
7 would you, like if you move it, what would
8 be your formula essentially is my
9 question?

10 R. Okay. So, if you see the ATC firm, it
11 includes QCRND firm, so the QCRND firm
12 should be moved to the equation just below
13 that, ATC non-firm.

14 Q.150 And the ATC non-firm would read?

15 R. Well, QCRND non-firm plus QCRND firm plus
16 the rest of the equation.

17 Q.151 So, you would put them distinctly?

18 R. I would actually combine them but just for
19 the purposes of discussing what to do with
20 these equations, I would just move it
21 down. But I would actually combine them
22 into a single QCRND. Or secondary
23 service.

24 Q.152 And if the QCRND firm is used to serve the
25 peak requirement of the native load, you

1 would still leave it as a secondary
2 service similar to a non-firm service?

3 R. Well, that's a good question. The QCRND
4 firm is from non-designated resources so
5 at peak times you really probably wouldn't
6 be designating non-designated resources,
7 you would be using all your designated
8 resources to serve your load. So, there
9 should be at that point no use for non-
10 designated resources. So, you would not
11 go short of capacity at peak, there would
12 be no reason to use non-designated
13 resources to serve your peak. Unless you
14 have an outage.

15 Q.153 And then how would you treat it if there's
16 an outage?

17 R. In which case you would call in reserves,
18 emergency reserves. You would have
19 curtailment priorities. So, you would
20 have a curtailment in which case the QCRD,
21 the firm network service and the firm
22 point-to-point service would be curtailed
23 last. So, all the non-firm uses of the
24 system would be curtailed. And then you
25 would share the curtailments between the

1 firm network's resources and the firm
2 point-to-point resources.

3 Q.154 Well, maybe I've lost you here. I heard
4 you say that they would be all in the same
5 priority and then you would be using some
6 and not or I didn't understand what you
7 said.

8 R. Yes. So, if you are in an emergency
9 situation where you require... if you run
10 out of reserves and then you require a
11 curtailment, then first you would curtail
12 the non-firm uses of the system to be
13 economy purchases under non-firm uses.
14 Then you would share the curtailment among
15 the network resources, the firm designated
16 network resources and the firm point-to-
17 point uses of the system. So, they would
18 share in contributing to the reliability,
19 they would be curtailed, they would share
20 in the curtailment.

21 Q.155 On a *pro rata* basis?

22 R. *Pro rata* basis.

23 Q.156 Thank you. I think that covers my
24 question.

25 R. Okay.

1 Q.157 Thank you.

2 R. Thank you.

3 LE PRÉSIDENT :

4 Merci. Alors, ceci complète les questions pour la
5 formation.

6 Maître Turmel?

7 RÉINTERROGÉ PAR Me ANDRÉ TURMEL :

8 Quelques questions, Monsieur le Président, de
9 réinterrogatoire.

10 Q.158 Dr. Sinclair... good morning again, Dr.
11 Sinclair.

12 R. Good morning.

13 Q.159 A couple of questions. First of all, on
14 the reciprocity discussion you had
15 yesterday with HQ counsel, yesterday you
16 agreed that HQT does not have a, in
17 Québec, a reciprocity obligation. But
18 could you therefore bring the precision to
19 clarify your statement to the Régie when
20 we look at it from the U.S.?

21 R. Yes. Yesterday, counsellor Hivon was
22 correct in agreeing that section 6 of the
23 HQT Tariff does not impose a reciprocity
24 obligation on any of HQ. The reciprocity
25 obligation comes from obligations

1 undertaken by the HQ with respect to its
2 affiliates doing business in the U.S., for
3 instance, where, for instance, in New
4 England, when HQUS, which is the marketing
5 arm of the production function of HQ, uses
6 a transmission network in ISO New England,
7 there's a provision in the ISO New England
8 Tariff requiring that the affiliates of
9 the marketing arm, which would be HQT, if
10 one of the affiliates controls
11 transmission or operates a transmission
12 system, then that affiliate is required to
13 provide comparable open access service.

14 Q.160 So, in the New England ISO reference that
15 you just made reference, we're just going
16 to have a quick reading of it. So, I
17 direct you to... this is ISO New England
18 Transmission Market Service and Tariff,
19 it's the page of the reciprocity provision
20 of HQT-ISO that...

21 Me MARIE-CHRISTINE HIVON :

22 Monsieur le Président...

23 Me ANDRÉ TURMEL :

24 Permettez-moi d'expliquer un peu là ce que c'est...

25 Me MARIE-CHRISTINE HIVON :

1 Avant de le lire, oui, si vous pouvez expliquer
2 avant de le lire.

3 Me ANDRÉ TURMEL :

4 Bien, je suis en train d'expliquer ce que c'est.

5 LE PRÉSIDENT :

6 Laissons maître Turmel terminer l'ensemble de sa
7 question. Si vous avez une objection, la Régie
8 entendra l'objection.

9 Me ANDRÉ TURMEL :

10 Merci, Monsieur le Président.

11 Q.161 So, you just referred to my question, Dr.
12 Sinclair, that I was asking you from the
13 U.S. standpoint what it meant and you made
14 reference, you gave an explanation to the
15 New England ISO. For example, in their
16 OATT...

17 R. Yes.

18 Q.162 ... because you have an OATT there, they
19 have a reciprocity obligation that looks
20 like pretty similar like the one in Québec
21 and you explained what it meant. So, I
22 just want to go with you and make a
23 reading because you made an explanation of
24 the fact that those, in this reciprocity,
25 they are provisions that are directed

1 towards Canadian affiliates of HQUS?

2 11H14

3 R. That's right.

4 Q.163 That's the point you want to make, okay.

5 Me MARIE-CHRISTINE HIVON :

6 Alors, Monsieur le Président...

7 Me ANDRÉ TURMEL :

8 Alors, je veux qu'on lise le tout, Monsieur le
9 Président.

10 Me MARIE-CHRISTINE HIVON :

11 Oui. Alors, Monsieur le Président, d'abord, on est
12 en réinterrogatoire pour apporter des précisions et
13 je pense que, en partant, on déborde de beaucoup cet
14 aspect-là, premièrement.

15 Deuxièmement, j'ai une préoccupation,
16 Monsieur le Président, j'aimerais qu'on puisse me
17 confirmer, et c'est personnellement la première fois
18 que je fais ça, est-ce qu'il y a eu des discussions
19 entre les procureurs de NLH et monsieur Sinclair
20 alors qu'il était en contre-interrogatoire
21 concernant cette question-là? Ça me préoccupe
22 particulièrement ce matin à voir comment le
23 réinterrogatoire prend la forme qu'il prend. Et
24 j'aimerais qu'on puisse me le confirmer, Monsieur le
25 Président.

1 Me ANDRÉ TURMEL :

2 Alors, Monsieur le Président, je pense que ce
3 dernier commentaire m'apparaît tout à fait
4 inapproprié. Tout au long du contre-interrogatoire,
5 on a bien fait attention de respecter la règle
6 générale.

7 Mais je vous rappelle qu'on est ici en
8 matière de *policy*, et ce matin, sachant que monsieur
9 Sinclair allait être réinterrogé, j'ai sorti ces
10 dispositions-là. Et vous verrez dans le sens de ma
11 question... j'ai posé ma question avant d'introduire
12 ce document-là. Il a répondu, il a donné l'exemple
13 américain.

14 Alors, je n'ai pas d'autres commentaires
15 à faire à la remarque de ma consœur là qui tente
16 encore une fois de faire dériver ou dérapier le
17 débat.

18 Me MARIE-CHRISTINE HIVON :

19 Monsieur le Président, ça ne me rassure pas du tout.
20 Je ne veux pas faire dériver le débat, nous voulons
21 terminer l'interrogatoire de ce panel, et je crois
22 que nous avons été très efficaces à cet égard-là de
23 notre côté. Mais je n'ai pas reçu la réponse à ma
24 question, est-ce qu'il y a eu des communications
25 entre les procureurs de NLH et monsieur Sinclair

1 alors qu'il était en contre-interrogatoire, entre
2 l'ajournement d'hier et les questions qui lui sont
3 posées en ce moment sur sa référence à ISO-NE et le
4 document qu'on nous sort relativement à ISO-NE et
5 des questions très ouvertes sur un sujet...
6 habituellement, en réinterrogatoire, on remet dans
7 un contexte... et on n'a pas eu l'occasion de parler
8 au témoin avant pour discuter des possibilités de
9 réinterrogatoire pour venir bonifier un contre-
10 interrogatoire où les questions étaient claires, les
11 réponses étaient claires. Et c'est dans nos
12 obligations, Monsieur le Président, on ne parle pas
13 et on ne prépare pas un témoin pour son
14 réinterrogatoire.

15 Alors, j'insiste pour avoir la réponse à
16 ma question.

17 Me ÉRIC DUNBERRY :

18 Monsieur le Président...

19 LE PRÉSIDENT :

20 Maître Dunberry, nous avons déjà le procureur qui
21 fait l'objection. Quelle est la nécessité pour vous
22 d'intervenir également?

23 Me ÉRIC DUNBERRY :

24 Je n'interviendrai pas, Monsieur le Président.

25 LE PRÉSIDENT :

1 Merci.

2 Un instant. Alors, la Régie va se retirer quelques
3 minutes.

4 SUSPENSION DE L'AUDIENCE

5 11H34

6 LA GREFFIÈRE :

7 Veuillez prendre place, s'il vous plaît.

8 LE PRÉSIDENT :

9 Alors, reprise de l'audience. La Régie va demander,
10 Maître Turmel, réponse à la question qui a été posée
11 par maître Hivon simplement.

12 Me ANDRÉ TURMEL :

13 Oui, Monsieur le Président. Alors, tout au long de
14 l'audience, nous avons bien mentionné à nos clients
15 et aux témoins que, dans tous les cas, la règle
16 était que quand ils étaient... ils faisaient l'objet
17 du contre-interrogatoire, il n'était pas question de
18 venir discuter de l'objet du contre-interrogatoire.

19 Ce matin, donc, avec nos clients... bien,
20 avec mes clients, en l'absence du docteur Sinclair,
21 nous avons préparé les enjeux relativement au
22 réinterrogatoire. Et vous savez comment ça se passe
23 dans une salle? Je pense que le docteur Sinclair
24 est entré dans la salle et il a probablement été
25 informé des enjeux mais les enjeux... c'est-à-dire

1 les thèmes du réinterrogatoire que sont la
2 réciprocité, attendez un instant, je ne sais pas où
3 est-ce que je les ai mis ici, le service secondaire,
4 la désignation, le caractère unique et c'est tout.

5 Les questions, on ne s'est pas assis avec
6 lui pour préparer les questions. On a simplement...
7 je pense que dans le cours de la discussion, avant
8 de venir ici, il savait simplement qu'on aurait
9 quatre ou cinq enjeux sur les thèmes, les thèmes
10 discutés, sans plus ni moins.

11 Me MARIE-CHRISTINE HIVON :

12 Alors, Monsieur le Président, je comprends que la
13 réponse de maître Turmel à la question c'est oui, il
14 y a eu des échanges.

15 Je crois que nous avons tous été surpris
16 hier de constater, particulièrement sur la notion de
17 réciprocité, que bien que monsieur Sinclair opine
18 une grande partie de son rapport, pas sur la
19 planification ouverte et sur les obligations de
20 TransÉnergie, il n'avait aucune connaissance des
21 fondements du critère qu'il utilisait.

22 Et c'était hier, en contre-interrogatoire,
23 deux ans après le dépôt de son rapport. Alors, je
24 vais... évidemment, je pense qu'il faut... ça met en
25 lumière tout l'aspect du réinterrogatoire qui est

1 fait et de la crédibilité, à tout le moins, pour ne
2 parler que de cela et non pas des connaissances que
3 monsieur Sinclair a pu acquérir depuis hier, de la
4 crédibilité de toutes réponses qu'il va pouvoir
5 donner, non seulement en ce qui concerne la
6 réciprocité mais en plus, sur tous les thèmes qui
7 ont été abordés en discussion avec les procureurs et
8 les représentants de NLH.

9 Évidemment, on n'a pas entendu sa réponse
10 mais la discussion concernant des nouveaux documents
11 qu'on essaie de vous produire en réinterrogatoire et
12 tout ce qu'il pourra venir vous dire aujourd'hui,
13 c'est bonifier, changer, essayer de modifier des
14 réponses qui ont été données hier parce que
15 quelqu'un s'est rendu compte qu'il fallait faire
16 quelque chose et ce ne sont pas les règles du jeu,
17 Monsieur le Président. Ce ne sont pas les règles du
18 jeu que nous avons entretenu tout au long de cette
19 audience.

20 Et, à un moment donné, vous allez devoir
21 vous faire une idée sur la crédibilité des témoins
22 qui ont été entendus devant vous, particulièrement
23 des experts, il y en a plusieurs, sur des questions
24 déterminantes.

25 Alors, je n'ai d'autres choses à ajouter

1 qu'il va falloir... ça va jouer énormément sur la
2 crédibilité de toutes réponses que monsieur Sinclair
3 pourrait vous donner maintenant.

4 Et je mentionnerais finalement que nous
5 prenons et Hydro-Québec prend très, très au sérieux
6 la réponse qu'on vient de recevoir de la part des
7 procureurs de NLH. Merci.

8 LE PRÉSIDENT :

9 Maître Turmel.

10 Me ANDRÉ TURMEL :

11 Oui, simplement pour mentionner qu'évidemment avec
12 ce que je viens d'indiquer, j'ai bien sûr indiqué
13 que seuls les trois ou les quatre enjeux, les quatre
14 sujets de discussions ont été mentionnés. Ma
15 consoeur tente d'élargir le tout. Là, je pense
16 qu'il faut ramener ça à des proportions telles
17 qu'elles le sont, là.

18 Alors, écoutez, pour éviter le débat
19 relativement à la pièce que je tentais de faire lire
20 à Dr Sinclair, je peux simplement passer au dépôt de
21 cette pièce-là, je n'ai pas de difficulté, et
22 autrement, bien, je suis prêt à continuer mon
23 réinterrogatoire.

24 LE PRÉSIDENT :

25 Un instant, s'il vous plaît. Alors, dans les

1 circonstances, la Régie va vous demander de ne pas
2 faire référence au document, là, que vous vous
3 apprêtiez à faire.

4 Me ANDRÉ TURMEL :

5 O.K.

6 LE PRÉSIDENT :

7 On va vous permettre de continuer.

8 Me ANDRÉ TURMEL :

9 O.K. Merci.

10 Q.164 Dr. Sinclair, now, let's discuss so we
11 address the question of reciprocity. You
12 were also... you received a question from
13 commissioner Gervais on secondary
14 services. Now, let's go to the
15 designation and the attestation question.

16 Would you explain to the Régie, in
17 your opinion, how is the designation
18 mechanism of Part IV of HQT OATT
19 equivalent to the standard that is imposed
20 in Part III of the Québec OATT in light of
21 the ownership requirement in what we've
22 discussed?

23 R. Yes, as I said yesterday and as I had my
24 presentation the other day, there is a
25 requirement for network integration

1 transmission customers under Part III to
2 declare ownership or commitment to a PPA,
3 to its designated resources.

4 And as I pointed out, that has been
5 deleted for the Distributor. So,
6 currently in the Tariff there is no entity
7 that is responsible for attesting to the
8 ownership or the commitment under PPA for
9 the designated resources.

10 Q.165 And, in your opinion, as a market monitor
11 in the U.S., is it an acceptable situation
12 to have... what do you think of the
13 situation about different requirements for
14 native load and network load here in
15 Québec?

16 R. Well, I understand why Part IV was
17 introduced. There was a concern that
18 particular circumstances with regard to
19 the Heritage Pool were necessary to
20 address and I don't have an issue with
21 Régie having created Part IV for that
22 reason.

23 The concern I would have about Part
24 IV, and there is some evidence in this
25 hearing, and that is that it shouldn't be

1 used to allow preferential benefits to
2 accrue to the affiliate of the
3 transmission provider by making
4 incremental changes in Part IV which are
5 not available to standard network
6 customers such as the attestation, such as
7 the QCRND. These elements are being added
8 and they are not being provided to Part
9 III customers.

10 Q.166 Thank you. And have you ever encountered
11 such a situation in your experience of
12 having... I mean, different obligations
13 towards different parts of OATT?

14 R. I have not seen an open access tariff that
15 has a separate section for the
16 transmission provider's affiliate. But as
17 I said, I do understand why Régie
18 introduced the Part IV in light of these
19 circumstances of the Heritage Pool and the
20 legislation.

21 Q.167 Thank you. Yesterday you heard... or the
22 days before, you heard HQ counsel asking
23 questions to you about uniqueness of HQT
24 grid or HQT system. And you discussed,
25 for example, the fact that some

1 interconnections were asynchronist and
2 there were some other criteria and you
3 agreed to a certain extent that some, yes,
4 it should take some criteria with respect
5 on the HQT that there was some uniqueness.

6 My question to you is this being
7 said, what is your opinion about the fact
8 that HQT may have a certain character of
9 uniqueness with respect to the fact... to
10 the regulatory framework when one looks at
11 the OATT itself?

12 Me MARIE-CHRISTINE HIVON :

13 Monsieur le Président, je vais m'objecter à cette
14 question-là. Je pense qu'hier les questions et les
15 réponses étaient très claires. Monsieur Sinclair a
16 convenu, était d'accord que la situation de
17 l'interconnexion au Québec était unique.

18 Maître Turmel lui demande son opinion sur
19 un aspect élargi autre sur ce thème-là, sans le
20 référer aux notes, en paraphrasant ce qu'il a dit.
21 Alors je considère que ce n'est pas l'objet d'un
22 réinterrogatoire de préciser quelque chose. On est
23 ici pour qu'il donne son opinion sur autre chose
24 qu'il n'a pas jugé bon de mentionner hier. Alors,
25 je m'objecte à cette question-là.

1 11H44

2 Me ANDRÉ TURMEL :

3 Je vais simplement reformuler ma question.

4 Q.168 Dr. Sinclair, what is the impact?
5 Yesterday, you discussed those certain
6 uniqueness aspects of HQT with HQT
7 counsel, right? You discussed that?

8 R. Yes.

9 Q.169 Yes. What is the impact of this on the
10 OATT that we have to look at, that the
11 Régie has to approve?

12 R. Well, I think what I said yesterday, which
13 might not have been clear, was that you
14 can select certain characteristics of a
15 system that are different from all other
16 systems and you can call it unique. For
17 instance, you could look at the Eastern
18 Interconnect and find extremely unique
19 characteristics and call it unique and
20 then claim that there needs to be either
21 less adherence to Order 890 principles or
22 more adherence, depending how you want to
23 cast it.

24 So, what I said yesterday, is that
25 you can always select some criteria that

1 are relevant for special treatment. And
2 what I pointed out was that HQT is unique
3 in a way that probably requires it to...
4 that would have required to have a special
5 treatment with more coordination because
6 of its strong commercial ties to the
7 neighbouring interconnects.

8 And whereas the other interconnects
9 in the North America, do not have strong
10 commercial ties to each other with the
11 exception of Québec. So, there is a
12 special need for coordination.

13 Q.170 Okay. Thank you. Last question, I would
14 ask you to take C-1, the C-1 proposal of
15 HQ, the C-1, pages... it's at pages 199
16 and 200 in the equation. Tell me when
17 you're there.

18 R. Okay.

19 Q.171 Okay. And you discussed this this morning
20 with commissioner Gervais and also to a
21 larger extent with HQT counsel. But to
22 help us clarify the use of QCRD and QCRND,
23 can we ask you to just highlight or show,
24 and using the network resource, how it is
25 represented in the equation here and what

1 are the differences with the native load
2 when one looks at the equation?

3 R. Okay. So, we're back on sheet number 199
4 and we'll look at the scheduling horizon
5 since the equations are basically the same
6 in this respect.

7 The ETC firm in that equation, which
8 is the third equation down, includes QCRD
9 which is the native load, designated
10 resources and the QCRND, non-designated
11 resources. And the network integration
12 transmission service, firm commitments
13 from designated resources. So, you see,
14 in this equation, the QCRD and the NITS
15 are being treated in the same manner.

16 So, then you have down below in the
17 ETC non-firm, you have the network
18 integration transmission service non-firm
19 which should be a secondary service. And
20 so, you see, it is being treated on the
21 lower level than the native load non-
22 designated resources.

23 Q.172 Thank you. Ça complète notre
24 réinterrogatoire, Monsieur le Président.

25 LE PRÉSIDENT :

1 Merci, Maître Turmel. Est-ce qu'il y a des
2 questions suite au réinterrogatoire de la part
3 d'Hydro-Québec, du Transporteur, non? Pour la
4 Régie, maître... non?

5 Me ANDRÉ TURMEL :

6 On peut libérer docteur Sinclair?

7 Me ÉRIC DUNBERRY :

8 Juste un instant, Monsieur le Président.

9 LE PRÉSIDENT :

10 Oui, très bien.

11 Me MARIE-CHRISTINE HIVON :

12 Nous n'aurons pas d'autres questions.

13 LE PRÉSIDENT :

14 Merci, Maître Hivon. Donc, ceci termine l'audition
15 de l'expert. Donc, vous êtes libéré pour le présent
16 témoignage. Thank you, Doctor Sinclair.

17 LE TÉMOIN :

18 Thank you very much.

19 ET LES TÉMOINS NE DISENT RIEN DE PLUS.

20 -----

21 LE PRÉSIDENT :

22 Alors, un instant. Alors, pour la suite des
23 travaux, la Régie va reprendre ses travaux les 9, 10
24 et 11 si nécessaire pour finaliser l'audition de la
25 preuve d'Énergie Brookfield Marketing.

1 Également, dès que maître Sicard sera
2 disponible, nous tenterons de faire le point pour le
3 traitement de l'objection relative à l'engagement
4 numéro 2, je crois, la réponse à l'engagement numéro
5 2 par UC. Donc, on pourra traiter ça en tout début
6 de semaine prochaine pour fixer les modalités du
7 traitement mais les journées vont être
8 prioritairement dédiées à la preuve d'Énergie
9 Brookfield Marketing et les journées pour la contre-
10 preuve et les plaidoiries, les argumentations ont
11 déjà été établies par la Régie, par lettre de la
12 Régie. Donc, ces dates sont maintenues.

13 Quant à la décision de la Régie qui est
14 encore en délibéré, la Régie compte la rendre en
15 tout début de semaine prochaine. Donc, elle
16 finalisera le tout et rendra sa décision.

17 Sur ce, nous allons ajourner pour
18 l'audience.

19 Oui, Maître Dunberry.

20 Me ÉRIC DUNBERRY :

21 Une question, juste pour être bien sûr pour la suite
22 des choses, je vois maître Hamelin, lundi on reprend
23 avec le panel. Vos quatre témoins seront là lundi
24 prochain, Maître Hamelin?

25 Me PAULE HAMELIN :

R-3669-2008
5 MAI 2011

PANEL NLH
Réinterrogé par Me Turmel

1 Oui, ils sont en panel. Alors, on avait prévu...
2 tout le monde va être là lundi.

3 Me MARIE-CHRISTINE HIVON :

4 Parfait.

5 Me PAULE HAMELIN :

6 Peut-être juste préciser, Maître Dunberry avait
7 indiqué qu'il ne serait peut-être pas disponible
8 lundi et qu'on suspendait l'interrogatoire et il
9 était rendu à l'interrogatoire de monsieur Roach et
10 qu'on allait faire peut-être l'aspect planification.
11 Est-ce que c'est toujours le cas?

12 Me ÉRIC DUNBERRY :

13 Non, malheureusement pour mes autres clients, je
14 serai à Montréal et non à Toronto. Alors, je serai
15 ici lundi matin pour la suite des choses et j'ai pu
16 me faire remplacer en dernière heure.

17 LE PRÉSIDENT :

18 Merci.

19 Me PAULE HAMELIN :

20 Merci.

21 LE PRÉSIDENT :

22 Donc, ça termine. Nous ajournons à lundi.

23 AJOURNEMENT AU 9 MAI 2011 À 9H00.

24 -----

25

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.

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Et j'ai signé,

DENISE TURCOT
Sténographe officielle bilingue