

RÉGIE DE L'ÉNERGIE

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

DOSSIER : R-3669-2008

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

AUDIENCE DU 9 MAI 2011

VOLUME 27

DENISE TURCOT
sténographe officielle

R-3669-2008
9 MAI 2011

COMPARUTIONS

Me JEAN-FRANÇOIS OUIMETTE,
procureur de la Régie

REQUÉRANTE :

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

INTERVENANTS :

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

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

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

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

Me LOUISE CADIEUX,
procureure de Ontario Power Generation

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

Me DOMINIQUE NEUMAN,
procureur de Stratégies énergétiques et Association
québécoise de lutte contre la pollution
atmosphérique (SÉ-AQLPA)

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

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

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LISTE DES ENGAGEMENTS

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#15 : Verify if Mr. Roach reviewed
Exhibit HQT-21. 152

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B-231 :	(en liasse) Trois documents relatifs à Southwest Power Pool.	129
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1 EN L'AN DEUX MILLE ONZE (2011), ce neuvième (9e)
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 9 mai 2011,
11 dossier R-3669-2008 - Phase 2. Demande relative à
12 la modification des Tarifs et conditions des
13 services de transport d'Hydro-Québec à compter du
14 1er janvier 2009. Poursuite de l'audience.

15 Me PAULE HAMELIN :

16 Bonjour, Monsieur le Président. Juste vous
17 indiquer, comme vous avez pu voir, j'ai transmis les
18 engagements 1 à 14. Et je les ai fait parvenir,
19 certaines copies, à la Régie. Si jamais on avait
20 besoin de d'autres copies, faites-moi signe, on
21 verra à vous en fournir.

22 Je voulais attirer votre attention sur le
23 fait que dans l'engagement numéro 14, qui est la
24 traduction, on l'a appelé « draft translation »,
25 j'attire votre attention sur le fait qu'il y a une

1 erreur dans la citation relativement à l'article
2 2.2. A la page 13, si vous descendez à la dixième
3 ligne, on devrait lire...

4 LE PRÉSIDENT :

5 Quel paragraphe, s'il vous plaît?

6 Me PAULE HAMELIN :

7 Dans la citation de l'article 2.2. Est-ce que ça
8 va?

9 LE PRÉSIDENT :

10 Très bien.

11 Me PAULE HAMELIN :

12 On lit:

13 « *By a new eligible*
14 *customer.* »

15 Et en fonction du tarif alors en vigueur, on devrait
16 lire:

17 « *By an eligible*
18 *customer.* »

19 Et la même citation se retrouve à la page 21, dans
20 le paragraphe 79. Alors, c'est la même correction,
21 on aurait dû lire:

22 « *By an eligible*
23 *customer.* »

24 Et non pas:

25 « *A new eligible*

1 *customer.* »

2 Je vous fais grâce des coquilles, naturellement
3 c'est un *rough translation*.

4 LE PRÉSIDENT :

5 Hum-hum.

6 Me PAULE HAMELIN :

7 Mes collègues, dans le contexte du contre-
8 interrogatoire de NLH, vous ont soumis la décision
9 D-2002-260; c'est la pièce B-228. Je me suis
10 aperçue qu'il manquait plusieurs pages à cette
11 décision-là. Alors, j'apprécierais qu'on nous
12 fournisse une copie complète de la décision
13 puisque'on parle d'un dossier de plainte, alors vu
14 que ce n'est pas toujours facile d'avoir copie de
15 ces documents-là. Alors, si c'était possible
16 d'avoir la copie complète, parce que ce n'est pas
17 une décision qui est complète.

18 LE PRÉSIDENT :

19 Vous dites la pièce B-200?

20 Me PAULE HAMELIN :

21 B-228.

22 LE PRÉSIDENT :

23 228.

24 Me PAULE HAMELIN :

25 Qui était la décision D-2002-260.

1 LE PRÉSIDENT :

2 Merci.

3 Me PAULE HAMELIN :

4 Je vous remercie.

5 LE PRÉSIDENT :

6 Alors, quelques questions d'intendance. Concernant
7 les réponses de NLH aux engagements qui ont été
8 pris, ils ont été reçus sauf pour les engagements
9 pris les 3, 4 et 5 mai.

10 Maintenant, concernant le traitement de
11 l'objection du Transporteur à la réponse à
12 l'engagement numéro 2 de UC-RNCREQ, la Régie prévoit
13 tenir, entendre les parties le mercredi prochain le
14 11 mai, à 9 h 00, si nous avons terminé avec le
15 présent panel. Sinon, à la suite de l'audition du
16 présent panel. Et ceci termine les remarques
17 préliminaires de la Régie pour aujourd'hui. La
18 Régie ne prévoit pas rendre sa décision dès
19 aujourd'hui concernant le débat tenu la semaine
20 dernière avec maître Turmel et NLH.

21 Me ANDRÉ TURMEL :

22 C'était ma question, Monsieur le Président, que je
23 venais vous poser. Bonjour.

24 LE PRÉSIDENT :

25 Bonjour.

1 Me ANDRÉ TURMEL :

2 Donc, André Turmel pour NLH. J'ai bien pris note
3 des commentaires de ma consœur maître Hamelin pour
4 la pièce B-228. Effectivement, c'est un point
5 correct, la décision sera déposée au complet par mes
6 confrères.

7 Sur l'engagement 2 UC-RNCREQ, vous
8 prévoyez un débat le 11 mai. J'annonce
9 immédiatement que nous serons présents et nous
10 ferons vraisemblablement faire valoir des droits
11 également à l'égard de ce point, qui nous intéresse
12 et qui concerne tous les intervenants.

13 Je comprends que quant au débat sur
14 l'engagement 16, vous nous dites que ça ne sera pas
15 rendu aujourd'hui. Je comprends que ce sera plus
16 tard cette semaine. Je vous remercie.

17 LE PRÉSIDENT :

18 Concernant la demande de déposer la décision
19 complète, maître Dunberry, est-ce qu'il y a un...
20 pour la pièce B-228?

21 Me ÉRIC DUNBERRY :

22 Monsieur le Président, je présume que c'est déjà
23 dans le pipeline en quelque part. Merci.

24 LE PRÉSIDENT :

25 Très bien, merci. Alors, nous en étions à continuer

1 l'interrogatoire du présent panel. Je crois que
2 c'était maître Dunberry qui interrogeait.

3 9H10

4 PANEL EBM

5 CONTRE-INTERROGÉS PAR Me ÉRIC DUNBERRY :

6 Bonjour, Monsieur le Président. Bonjour Madame,
7 Monsieur les régisseurs. Good morning, Mr. Roach.

8 M. CRAIG R. ROACH :

9 Good morning.

10 Me ÉRIC DUNBERRY :

11 We are going to continue your cross-examination this
12 morning, more or less exactly where we left it
13 sometime ago.

14 Q.1 So I would ask you to take a copy of your
15 report, a copy of your PowerPoint
16 presentation and I will be referring you
17 as well, as I did before, to your evidence
18 filed in the BCTC case as well.

19 But before we go there, I would like
20 to ask you one simple question concerning
21 one of the documents that we received from
22 your counsel on May the 6th, 2011. It's
23 in respect of your mandate.

24 If you take a copy of a document
25 called *Réponse d'Énergie Brookfield EBM*

1 *aux engagements numéros 10 à 14. So, this*
2 *is your client's response to Undertakings*
3 *number 10 to 14. And I was referring to*
4 *Undertaking number 10 which is the first*
5 *undertaking for purposes of our discussion*
6 *and it deals with your mandate.*

7 So, I would like to ask you to take
8 a copy of that document that was attached
9 to your response. It's a redacted version
10 of an agreement that defines the scope of
11 your mandate.

12 And it is said in the first
13 paragraph, and I will quote this:

14 *« This is an agreement*
15 *between Brookfield*
16 *Énergie Marketing inc.*
17 *and Boston Pacific*
18 *Company through which*
19 *Boston Pacific will*
20 *provide services as an*
21 *independent expert in*
22 *support of Énergie*
23 *Brookfield Marketing*
24 *Inc. Complaint and*
25 *Rate Case Proceeding.*

1 *This agreement covers*
2 *work performed by*
3 *Boston Pacific for*
4 *Brookfield commencing*
5 *March 8th, 2010*
6 *through anticipated*
7 *completion of the*
8 *project by June*
9 *2011. »*

10 So, the project to which you refer is both
11 the complaint case and the rate case
12 proceeding. Is that correct?

13 R. Yes.

14 Q.2 And you signed one agreement for both
15 proceedings. Is that correct?

16 R. Yes.

17 Q.3 Thank you. I'd like now to move back to
18 your report on page 17, paragraph 33. And
19 this is where we left it last time. This
20 paragraph, and I invite you to read all of
21 it, but the last line is the one I will be
22 referring you to is, and I quote:

23 *« In sum, HQT fails to*
24 *state the problem its*
25 *harmonization solution*

1 *is intended to*
2 *solve. »*

3 And this relates back to your previous
4 testimony to the effect that harmonization
5 is a remedy to a problem and in this case
6 HQT fails to solve a problem.

7 Me PAULE HAMELIN :

8 Monsieur le Président, je veux juste, et je
9 m'objecte, là, parce qu'il a dit, il a paraphrasé
10 l'expert et on ne reprendra pas tout ce que l'on a
11 fait comme débat la dernière fois. C'était son
12 argument que monsieur Roach faisait référence à un
13 *remedy* dans le contexte d'une plainte versus une
14 cause tarifaire.

15 Alors, je ne veux pas rentrer dans le
16 débat et quand il paraphrase l'expert, il dit: To
17 *remedy* a problem, là, on va faire référence à ce
18 moment-là aux notes précises parce que je ne veux
19 pas qu'on commence à faire un exercice de résumé
20 grossier et large d'une journée d'audience.

21 Me ÉRIC DUNBERRY :

22 Alors, Monsieur le Président, je vais retirer le mot
23 « *remedy* » pour simplifier les choses and I will use
24 the word « *solution* ».

25 Q.4 So, Mr. Roach, this goes back to our

1 previous discussion where you took the
2 position - and again I am not referring
3 you to any specific wording but to the
4 general concept - that according to your
5 previous testimony, harmonization is a
6 solution, and I use that word because this
7 is your word here in paragraph 33, is a
8 solution to a problem. This is the
9 position you advanced in this rate case,
10 Phase 2, is that correct?

11 R. It is and more simply, it's saying that in
12 proposing harmonization with a significant
13 change in ATC, there should be a stated
14 purpose.

15 Q.5 I'd like to refer you back to your
16 testimony in the BC case. This was an
17 exhibit we saw before, I believe it's
18 Schedule 6 or Annex 6 to Exhibit C-6-61,
19 I believe, it's your rebuttal evidence in
20 the BCTC case. Now, you have that?

21 R. I do.

22 Q.6 I would like to... we'll take just the
23 time it takes to get there, and I'd like
24 to refer you back to page 3 of the
25 transcript that... not the transcript but

1 the actual written submission, on page 3
2 under the title *Summary*, starting at line
3 21, you summarize your views on the issue
4 that was addressed before and you say:

5 « Above you suggested
6 the two best sources
7 for determining a FERC
8 policy. »

9 Did you review these for purposes of your
10 testimony?

11 R. Yes.

12 Q.7 « How would you
13 summarize what you
14 found in the FERC 890
15 Orders? »

16 And your answer is on the following page,
17 lines 1 to 5, and I quote:

18 « After reviewing
19 Order 890, 890-A, B
20 and C, it is evident
21 that FERC requires the
22 system conditions of
23 adjoining areas to be
24 accounted for when
25 calculating the amount

1 *of transfer capability*
2 *that is available*
3 *between two systems,*
4 *that is when*
5 *calculating firm ATC.*
6 *Later in this*
7 *testimony, I'll*
8 *support the issue with*
9 *direct quotes from*
10 *FERC 890 Orders. »*

11 I assume that you remain of the view that
12 this is a fair summary of the content of
13 the FERC 890 Orders?

14 R. Yes, I've said several times now, I have
15 no problem with the concept. I'm simply
16 pointing out that any regulator, including
17 FERC, would not want there to be harmful
18 consequences in implementing that concept.

19 Q.8 Okay. You will agree with me, I assume,
20 Mr. Roach, that it is generally the
21 transmission service providers that
22 calculate and pose ATC values on
23 interties?

24 R. Yes, as a matter of operation.

25 Q.9 Yes. And you will understand with me that

1 in fact there is an obligation made to the
2 transmission provider to calculate and
3 post ATC values on interties and to keep
4 these values updated as time goes by. Is
5 that correct?

6 R. Yes, yes.

7 Q.10 And, in fact, this obligation to calculate
8 and post ATC is a continuous obligation
9 when events occur, when circumstances
10 change, the transmission service provider
11 has, as a continuous obligation, the duty
12 to update and post current ATC values for
13 the market. Is that correct?

14 R. Yes, and along with the duty not to do
15 things that are anti-competitive or that
16 are needlessly harmful.

17 Q.11 So, in that summary, when you refer to the
18 word « when », you use the word « when »
19 in line 3, what you're saying is that this
20 obligation to take into account adjoining
21 areas or system conditions in adjoining
22 areas, when calculating the amount
23 transfer capability that is available
24 between two systems, that is when
25 calculating the ATC, this notion of

1 considering system conditions on the
2 neighbouring system is something that you
3 implement when the transmission service
4 provider calculates the ATC value as often
5 as it does, I assume?

6 R. That's where it will be taken account of.
7 I'm not sure that when is the word I would
8 draw attention to, but I don't have any
9 trouble with addressing the issue of
10 taking into account adjoining territories
11 at the time you calculate ATC calculations
12 or as you calculate ATC.

13 Q.12 Now, I refer to page 7 of your rebuttal
14 evidence, always in the same BCTC case and
15 I'd like to read line 14 to 17. And you
16 refer to a statement made by FERC and you
17 say, and I quote:

18 *« Note too that in the*
19 *quoted above, FERC*
20 *states that this is*
21 *applicable to any*
22 *neighbouring*
23 *transmission*
24 *providers. This would*
25 *presumably include*

1 *transmission providers*
2 *that have a tariff*
3 *based on the pro forma*
4 *OATT such as BCTC and*
5 *transmission providers*
6 *operating a pool*
7 *system such as in*
8 *Alberta. »*

9 I again assume that you are in agreement
10 with that previous statement that this
11 obligation covers all interties, all or
12 any, actually any interties or
13 neighbouring interties?

14 R. Yes.

15 Q.13 Now, if we move to page 19 of that
16 rebuttal evidence, page 19, line 19, this
17 was a question asking you whether you had
18 reviewed the service provider's response
19 to a number of information requests and
20 you said yes and your answer is as
21 follows, and I quote from line 20:

22 *« Yes, I reviewed some*
23 *of those relevant to*
24 *the FERC policy issue*
25 *addressed in my*

1 *testimony.*
2 *Would you like to*
3 *comment on some of*
4 *them?*
5 *Yes. There are three*
6 *that I would like to*
7 *respond to.*
8 *What is the first of*
9 *these three? »*

10 Page 20, line 1:

11 *« The first of the*
12 *three is BCTC's*
13 *response to*
14 *information request*
15 *2.11.1 from BCUC -*
16 *that is the Utility*
17 *Commission, that is*
18 *the Board - the*
19 *question asks BCTC to*
20 *respond to TCE's claim*
21 *that BCTC fails to*
22 *take into account*
23 *conditions on*
24 *neighbouring systems*
25 *when calculating the*

1 TRM element in ETC
2 calculations and
3 therefore BCTC does
4 not conform to FERC
5 requirements. BCTC
6 provides a lengthy
7 response, but the core
8 of the answer appears
9 to be that in Order
10 number 890, paragraph
11 273, FERC set out
12 seven factors that may
13 be taken into account
14 in determining TRM.
15 None of those factors
16 require a transmission
17 provider to increase
18 TRM by the amount of
19 the difference between
20 its firm TTC and the
21 forecast of hourly
22 import limit on an
23 adjacent transmission
24 system. »

25 The issue here is whether you actually

1 adjust the RTM. Is that correct?

2 R. That's my understanding, yes.

3 Q.14 Yes.

4 « How would you
5 respond? »

6 So this is your answer.

7 « I would respond by
8 saying that BCTC is
9 addressing the wrong
10 question. »

11 BCTC in our case would be TransÉnergie, is
12 that correct?

13 R. Correct.

14 Q.15 « So, BCTC is
15 addressing the
16 question of how - and
17 you underline how -
18 FERC might want a
19 transmission provider
20 to reflect conditions
21 on neighbouring
22 systems not whether.
23 FERC wants those
24 conditions to be
25 reflected as to

1 *whether it is*
2 *abundantly clear from*
3 *the quotes I have*
4 *provided from 890*
5 *Orders and from the*
6 *GOAs, that FERC*
7 *requires: a) ATC*
8 *calculations to be*
9 *consistent on either*
10 *side of an interface;*
11 *b) that all ATC*
12 *calculations take into*
13 *account conditions in*
14 *adjoining systems. It*
15 *is also common sense*
16 *that no one would be*
17 *selling firm*
18 *transmission service*
19 *that it knows, based*
20 *on the real world*
21 *operating experience*
22 *over many years, it*
23 *cannot actually*
24 *provide. It appears*
25 *BCTC is saying that*

1 *since FERC did not*
2 *give pinpointed advice*
3 *on how the situation*
4 *at hand might be*
5 *reflected in TRM or in*
6 *TTC this somehow*
7 *undermines the*
8 *fundamental principle*
9 *set out by FERC in*
10 *890. BCTC's logic is*
11 *not convincing. »*

12 Again, I assume you are in agreement with
13 the statement you made before the Utility
14 Commission in the TCE case? You're still
15 agreeing with that statement, Mr. Roach?

16 R. Of course and again, in the end, the
17 British Columbia Utility Commission did
18 agree with what we argued and saw harm and
19 remedied it in a fashion that didn't
20 violate the contract. So, I like this
21 decision. It very much supports what I
22 say and it very much gives clean answers
23 to the four questions I raise.

24 Q.16 Now that statement we just read, I assume,
25 you would agree if the Régie agreed in

1 this decision that this statement is
2 applicable to this Phase 2 case hearing?

3 R. I don't know what applicable means. I
4 mean, it's what I said. I agree with it
5 today as I agreed with it when I wrote it
6 and again, the British Columbia Order,
7 that decision I think is very helpful
8 here.

9 Q.17 I think we agree on that as well.

10 R. That's good news.

11 9H26

12 Q.18 Your testimony in this case, Mr. Roach -
13 okay, that has been covered, thank you.

14 I would like to now ask you a few
15 questions about what you call your third
16 crucial question, so we could perhaps go
17 back to paragraph 19. And in paragraph 19
18 you say the following.

19 Me PAULE HAMELIN :

20 Du rapport?

21 Me ÉRIC DUNBERRY :

22 Du rapport, oui.

23 Q.19 « It would not be
24 sufficient for the
25 Régie to approve

1 *amendments like C-1. »*

2 You're referring to the proposed amendment
3 to Schedule C-1 that TransÉnergie is
4 suggesting?

5 R. Correct.

6 Q.20 « *The Régie also*
7 *should assess the*
8 *impact of those*
9 *amendments on*
10 *transmission customers*
11 *and determine how to*
12 *approach the ATC*
13 *reduction. »*

14 Do you still agree with this statement,
15 Mr. Roach?

16 R. Yes.

17 Q.21 So, essentially, you're saying that before
18 this Régie can, in this case, approve the
19 proposed modifications made to Schedule C-
20 1, it would have to allocate... well,
21 first, it would have to determine the
22 proper level of ATC required by
23 harmonization and then justify an
24 allocation of the remaining ATC.

25 That would be two questions to be

1 answered before the actual approval to
2 Schedule C-1 could be approved by the
3 Régie. That is what you're suggesting, is
4 that correct?

5 R. Yes. Yes. There are four questions,
6 those are two of them.

7 Q.22 And that process would need this Board to
8 review the situation, factual situation on
9 each intertie connecting Québec with other
10 neighbouring systems, is that correct?

11 R. It would, but the same Attachment C-1
12 could be used. It's not a difference in
13 the policy or the standard, it just could
14 be a difference in the application of that
15 policy *per se*.

16 Q.23 And there would need to be a review of the
17 factual situation on each intertie before
18 this Régie, at the end of this rate case,
19 could make a determination?

20 R. Now, if... yes, if...

21 Q.24 Yes, it's a yes?

22 R. Yes, if there are consequences as
23 significant as there were on the Québec-
24 New England intertie, then surely this
25 Régie would want to look at the facts and

1 look at those consequences.

2 Q.25 Do you know how many interties we have
3 between Québec and neighbouring markets?

4 R. There are several, I don't know the total.

5 Q.26 Do you know how many DC interties we have
6 between Québec Interconnection and
7 neighbouring markets?

8 Me PAULE HAMELIN :

9 Monsieur le Président, toutes ces questions-là ont
10 été posées la dernière fois, j'y vais de mémoire, je
11 pourrais vous donner la cote. Mais tout ça, ça a
12 été posé la dernière fois.

13 Me ÉRIC DUNBERRY :

14 Ça a été posé à monsieur Sinclair, Monsieur le
15 Président; ça n'a pas été posé à monsieur Roach.

16 Me PAULE HAMELIN :

17 Écoutez, j'ai revu les notes hier. En tout cas, je
18 suis pas mal certaine que ça a été posé.

19 Me ÉRIC DUNBERRY :

20 Monsieur le Président, je ne vois pas... nous avons
21 malheureusement... d'abord, je ne suis pas vraiment
22 en accord avec la représentation faite, mais encore
23 une fois, compte tenu du fait que le contre-
24 interrogatoire de monsieur Roach a été coupé, ce
25 sont des questions introductives qui mènent à autre

1 chose. Donc, si le témoin peut simplement répondre,
2 ce sera plus efficace je pense.

3 LE PRÉSIDENT :

4 On peut avancer.

5 Me ÉRIC DUNBERRY :

6 Q.27 So, Mr. Roach, do you know how many DC
7 interties exist between Québec and its
8 neighbouring markets?

9 R. I don't know the exact number. You know,
10 I would think five or six, something in
11 that neighbourhood, but I don't know the
12 exact number.

13 Q.28 Do you know whether the July 2009
14 coordination covered all these interties,
15 all the DC interties, or was it a partial
16 ATC coordination? Do you know if it
17 covered all the interties or not?

18 R. I presume it covered all interties. I
19 didn't see a distinction but I think it
20 was just a general policy. And again, I
21 have no problem with the general policy as
22 long as the implementation is done to look
23 for answers to the four questions I raise.

24 Q.29 So, is it fair to say that you did not
25 personally conduct a review of the factual

1 situations relevant to each intertie
2 connecting Québec with other neighbouring
3 markets? You did not perform such a
4 personal analysis of the factual
5 situation?

6 R. No, nor did I see that HQT put that in the
7 record.

8 Me PAULE HAMELIN :

9 Monsieur le Président, cette question-là a été posée
10 et l'expert a même référé à certaines minutes et
11 données confidentielles qu'il avaient consultées.
12 Alors, je voulais juste donner cette précision.

13 Me ÉRIC DUNBERRY :

14 Q.30 Mr. Roach, concerning the HQT-MASS
15 intertie - you know what is the HQT-MASS
16 intertie? Do you know where it is, do you
17 know anything about the HQT-MASS intertie?

18 R. I don't recall that particular name for
19 it. As Ms. Hamelin mentioned, I did
20 review confidential records on discussions
21 with both New England ISO and I believe
22 the New York ISO. I see that the New
23 England ISO has said that it's not going
24 to, on any of its interties, seek
25 consistency, seek to change how it

1 calculates its transfer capability. But
2 that's really what I've done in that
3 regard.

4 Q.31 So, do you know what was the posted firm
5 ATC on the Québec side of the HQT-MASS
6 intertie prior to harmonization, would you
7 be able to tell us?

8 R. No, I wouldn't be able to tell you.

9 Q.32 No. Would you be able to tell us what was
10 the firm ATC value posted on the Québec
11 side of the HQT-MASS intertie after
12 harmonization in July 2009?

13 R. No, I didn't look at it.

14 Q.33 Would you be able to tell us what was the
15 ATC value posted on the American side of
16 the HQT-MASS intertie before and after
17 coordination?

18 R. No. Again, I didn't look it up. HQT did
19 not present any information on it as far
20 as I can see in this proceeding. I teed
21 up the New England-Québec line because I
22 knew harmonization had caused harm there
23 and so that's why I use it as an example.

24 Q.34 If I ask you the same exact questions
25 concerning the HQT-Dennison intertie,

1 would your answer be the same as those you
2 just gave me for the HQT-MASS intertie?
3 R. Yes. Again, I used Québec-New England
4 because it was a good example, a detailed
5 example of the consequences of
6 harmonization. And I did not seek to look
7 at the other interties. And again, HQT,
8 as far as I understand, did not provide
9 any evidence here with these before and
10 after ATCs or any other evidence.
11 Q.35 If I ask the question concerning the HQT-
12 New Brunswick intertie, would your answer
13 be the same as those you gave me
14 concerning the HQT-MASS intertie?
15 R. It would be the same again.
16 Q.36 If I ask you the question concerning the
17 HQT-Ontario intertie...
18 LE PRÉSIDENT :
19 Est-ce qu'il y aurait moyen de rassembler le reste
20 des questions peut-être parce que là...
21 Me ÉRIC DUNBERRY :
22 C'est la dernière, Monsieur le Président...
23 LE PRÉSIDENT :
24 Oui?
25 Me ÉRIC DUNBERRY :

1 ... parce qu'elles ne s'en vont pas toutes au même
2 endroit.

3 LE PRÉSIDENT :

4 Parce que le témoin semble avoir répondu.

5 Me ÉRIC DUNBERRY :

6 Q.37 So, if I ask you the same question...

7 It's the last question, Monsieur le
8 Président.

9 ... concerning the HQT-Ontario
10 intertie, your answer would be the same?

11 R. It would be the same. And it would be the
12 same about HQT itself in providing
13 evidence.

14 Q.38 Now, you just said that HQT failed to
15 provide factual evidence concerning the
16 July 2009 ATC harmonization and this is
17 why you were not able to review any of
18 that information, is that correct?

19 R. What I said was that... you're asking me
20 for the same kind of information I had on
21 the Québec-New England intertie and all
22 these other interties and I said I didn't
23 provide that, nor did I believe that that
24 same information, certainly not the detail
25 that I had on Québec-New England, was

1 provided by HQT.

2 Q.39 Now, what prevented you from going on
3 these OASIS sites and reviewing the public
4 data available to you, I, and whoever
5 wants to access an OASIS and see, or ask
6 your client to actually provide you with
7 the data that you allege HQT failed to
8 provide in the context of this case? What
9 prevented you from conducting your own
10 analysis?

11 R. Nothing prevented me from conducting my
12 own analysis. It was a matter of that
13 analysis being necessary. I think that
14 our analysis of the Québec-New England
15 intertie, especially after the Régie's
16 decision in the complaint case, was
17 sufficient to really illustrate, to
18 document, to show the sense of the
19 approach I'm proposing which is to ask
20 those four questions. Along with the
21 British Columbia case which is another
22 great case.

23 So, nothing prevented me but I think
24 we have a very strong case based on those
25 two cases.

1 Q.40 Now, is it not your position, because it's
2 certainly not TransÉnergie's position, but
3 is it not your position that it is for the
4 Régie to have a full evidentiary factual
5 record? I think you say that in paragraph
6 14 of your report. You say that this
7 Régie needs a full record in this rate
8 case. Now, your position, Mr. Roach,
9 because this is your position, it's not
10 ours, it's yours, your position is to say
11 that there is a need for a full record in
12 this rate case. Now, when you saw that
13 Hydro-Québec did not feel relevant to
14 produce all that factual information
15 concerning all its interties, why did you
16 not do what you say is required in this
17 rate case and file the information you
18 feel is relevant to make the determination
19 you're asking this Régie to make?

20 Me PAULE HAMELIN :

21 Je vais m'objecter encore une fois, Monsieur le
22 Président. Il a déjà répondu à la question. D'une
23 part, c'est HQT qui fournit une preuve, qui a un
24 fardeau de preuve. Si en réponse on considère que
25 HQT n'a pas rempli son fardeau de preuve et qu'on

1 donne un exemple, on n'a pas besoin d'aller plus
2 loin. Alors, je vous sou mets que le reste se
3 plaidera en argumentation. Et je considère que, de
4 toute façon, la réponse a déjà été donnée. Mon
5 collègue argumente avec le témoin.

6 Me ÉRIC DUNBERRY :

7 Monsieur le Président, avec respect, je dirais que
8 c'est le procureur de NLH qui argumente sur des
9 questions de fardeau. Pardon, de Brookfield.

10 Le témoin expert représente à la Cour,
11 représente à la Régie, qu'il aurait été nécessaire
12 de présenter un dossier de faits complet, *a full*
13 *record*, devant vous dans le cadre de la Phase 2. Il
14 affirme que vous avez besoin de cette information-
15 là.

16 On vient de réaliser avec lui qu'il n'a ni
17 analysé, ni obtenu copie de l'information qu'il dit
18 pertinente. Je lui demande pourquoi.

19 Je pense que je peux demander à un expert
20 qui dit à la fois qu'une information est essentielle
21 et qui dit qu'il ne l'a pas considérée pertinente
22 pour la réviser, pourquoi ne l'a-t-il pas obtenue?

23 J'ai cru comprendre que sa réponse c'est
24 parce que c'était à nous de le faire mais je veux
25 quand même voir s'il y a d'autres options à la

1 réponse qu'il nous fournit.

2 Alors, je lui demande simplement pour
3 quelle raison n'a-t-il pas offert à la Régie les
4 faits et les analyses au soutien de ses conclusions.
5 Il me semble que c'est assez crucial comme question,
6 pour reprendre le terme du témoin.

7 LE PRÉSIDENT :

8 En réplique, Maître Hamelin?

9 Me PAULE HAMELIN :

10 Mon collègue dans sa contestation de mon objection
11 vous a dit justement la réponse que l'expert a
12 donnée, il a lui-même répondu à la question qu'il a
13 déjà posée à l'expert...

14 Me ÉRIC DUNBERRY :

15 Oui mais...

16 Me PAULE HAMELIN :

17 ... il l'a dit dans son argumentation. Alors, la
18 question a été posée et répondue.

19 Me ÉRIC DUNBERRY :

20 Monsieur le Président, si la réponse de l'expert...
21 oui?

22 LE PRÉSIDENT :

23 Alors, la Régie ne retient pas l'objection et permet
24 à maître Dunberry de conclure sur cette question.

25 Me ÉRIC DUNBERRY :

1 Q.41 So, Mr. Roach, the question again is since
2 you allege that it is essential for this
3 Régie in this rate case to have a full
4 record, why did you not complete the
5 record and analyze the data for each
6 intertie?

7 R. Yes, I have to agree with Ms. Hamelin, I
8 don't see that it is my place to create
9 that record. If that record is not
10 created here, what fails, what lacks
11 credibility or what is unproven is HQT's
12 harmonization plan, not my testimony.
13 What I hoped I illustrated in practical
14 terms were the consequences of their
15 application of that harmonization proposal
16 to the Québec-New England tie. And what
17 I hoped with the British Columbia case was
18 to show us another Commission faced with
19 a similar deliberation answering those
20 four questions.

21 So, I didn't do it because I didn't
22 think it was my place. The lawyers would
23 say: It's not my burden or Brookfield's
24 burden and I would agree with that.

25 9H41

1 Q.42 Let's spend a moment now with the
2 consequences of what you... well, you call
3 the consequences of this ATC harmonization
4 or of ATC harmonization itself except for
5 the only case you looked at which is HQT-
6 NE, New England. Do you know whether the
7 posted ATC values on the Québec side of
8 any interties, of any DC interties with
9 the United States, exceeded after
10 harmonization the existing transmission's
11 commitment, the firm existing
12 transmission's commitment, import or
13 export, on any of these interties?

14 In other words, was the ATC inferior,
15 superior or equal to the ETC, with an E,
16 like existing, transmission commitment,
17 did you do that comparison between the ATC
18 and ETC values?

19 R. No, again, you asked me this for every
20 intertie, did I do an analysis of those?
21 I did not. Again, I did not think it was
22 my place to do that and it's for HQT to
23 provide that if it wants to support its
24 harmonization plan.

25 Q.43 Now, would you agree with me that in cases

1 where the ATC value after harmonization is
2 equal or greater than the total firm
3 reserve capacity, including renewal
4 rights, there would be no need to consider
5 the impact or an allocation of ATC in
6 cases where the ATC exceeds, after
7 harmonization, the ETC value?

8 There would be enough space for
9 everyone, simply said?

10 R. Yes, I think that I wouldn't use the word
11 « need ». I'd say that clearly that would
12 not raise the spectre of harm as it does,
13 as the harmonization did for Québec-New
14 England. I'm not saying that it shouldn't
15 be considered, but it seems that it
16 wouldn't raise the issue of harm at that
17 point.

18 Q.44 Now, in your presentation, and I would ask
19 you to take a copy of your presentation,
20 the last page I believe, page 16, yes, it
21 is page 16, this is your section on
22 Commercial and Competitive Harm. The
23 second point refers to perceptions, page
24 16, that there is a perception or
25 perceptions that HQ - I assume you mean

1 TransÉnergie? Are you meaning
2 TransÉnergie?

3 R. No, I mean HQ, I mean the whole set of
4 affiliates.

5 Q.45 All right. So:

6 « HQ, Hydro-Québec
7 including all its
8 divisions, pushes
9 competitors aside. »

10 That is, you believe, a perception that
11 could flow from your review of the
12 situation on one intertie. I believe, the
13 HQT-NE intertie, you have not considered
14 the others. Is that correct? That is the
15 perception that you have, Mr. Roach?

16 R. I think it clearly could be. What
17 happened was HQT took action to reduce
18 ATC. It reduced it and then it allocated
19 all remaining ATC to its affiliates, I
20 think. I'm not saying, not charging
21 anyone with anti-competitive action, but
22 I think the perception that it was anti-
23 competitive is a real possibility.

24 Q.46 And in the notes... and in the notes,
25 volume 20, because you testified on this

1 as well, if I may refer you to the
2 transcript of your previous testimony,
3 it's volume 20 on page 61, I believe, page
4 61, line 228, you take the following
5 position and this is in your main
6 presentation, and I quote:

7 « I wanted to make a
8 point that, you know,
9 I've been talking
10 about tariff language
11 and I wanted to make
12 clear that it's not.
13 This is not just about
14 tariff language. This
15 is about the potential
16 for real harm and I'm
17 concerned about both
18 commercial and
19 competitive harm. »

20 So, would you still today endorse that
21 statement, Mr. Roach?

22 R. Yes.

23 Q.47 Except for Brookfield, do you know
24 personally whether any other complaints
25 were filed before the Régie by any other

1 transmission customers in relation to the
2 July 2009 ATC coordination?

3 R. I'm only familiar with the Brookfield
4 complaint.

5 Q.48 Except for the HQT New England intertie,
6 do you personally know whether the July
7 2009 ATC coordination created any ATC
8 allocation issues between TransÉnergie or
9 between existing customers and other
10 customers on any of the interties?

11 R. Again, I don't know because I didn't think
12 it was my place or my client's burden to
13 make those assessments of other interties.

14 Q.49 So, except for the one Brookfield case and
15 the HQT, and the New England intertie, it
16 is fair to say that today you have no
17 personal knowledge of any complaint or any
18 ATC allocation issues on any interties
19 following the July 2009 coordination
20 initiative?

21 Me PAULE HAMELIN :

22 Monsieur le Président, combien de fois on va
23 remettre la même question dans les permutations
24 possibles? Je pense qu'il a fait le point, là, et
25 l'expert a répondu la raison pour laquelle il a fait

1 son rapport de cette façon.

2 Me ÉRIC DUNBERRY :

3 Monsieur le Président, je ne vois pas là un motif
4 d'objection. Je vois là simplement une
5 interruption. J'ai posé la question en relation
6 avec certaines plaintes. J'ai posé la question à
7 l'égard des questions reliées à l'ATC. Là, je pose
8 des questions plus largement relativement à la
9 coordination. Chacun de ces termes-là a un sens
10 différent. La location c'est différent de la
11 réduction puis c'est différent de l'harmonisation
12 selon l'expert. Il faut diviser ça en quatre
13 questions.

14 Alors, ma consœur peut-être n'entend pas
15 les distinctions qui sont faites dans les questions
16 mais elles sont là, Monsieur le Président. Alors,
17 je demanderais simplement au témoin de répondre.

18 LE PRÉSIDENT :

19 Vous pouvez poursuivre pour l'instant.

20 R. Again, same answer. I didn't look at
21 other interties, so I don't have the
22 answer to that question. I really believe
23 that the Brookfield case is certainly
24 sufficient to justify what I've said, what
25 I've recommended and the British Columbia

1 cases had its usefulness.

2 Me ÉRIC DUNBERRY :

3 Q.50 So, if I get it, Mr. Roach, your entire
4 testimony with respect to potential harm
5 perceptions of pushing competitors aside,
6 perceptions that this could cause real
7 harm, as you say here, it is all based on
8 what you have been told by Brookfield in
9 the context of the Brookfield complaint.
10 Is that fair?

11 Me PAULE HAMELIN :

12 Encore, là, il vient dire que ce que Brookfield lui
13 a dit. Alors...

14 Me ÉRIC DUNBERRY :

15 Oui, Monsieur le Président, parce que le témoin a
16 indiqué qu'il n'a pas fait d'enquête personnelle.

17 Me PAULE HAMELIN :

18 Je veux juste rappeler une chose. Nous avons
19 répondu à la demande d'engagement à l'effet de tout
20 ce que l'expert a revu dans le cadre de ce dossier.
21 Il a fait ses... il a vérifié la preuve de HQT. Il
22 a fait ses propres vérifications. Il a regardé les
23 ordonnances de la FERC et mon collègue essaie de
24 réduire ça en disant que c'est ce que Brookfield lui
25 a dit. Alors, je m'objecte à la façon dont il pose

1 la question parce que c'est misleading.

2 Me ÉRIC DUNBERRY :

3 Monsieur le Président, le témoin pourra répondre.

4 Ma consoeur fournit la réponse au témoin. Tantôt le

5 témoin a repris la réponse de ma consoeur en réponse

6 à une de mes questions. Ce ne sont pas des motifs

7 d'objections valables, je vous le soumets

8 respectueusement. Ce n'est que des interventions

9 pour couper le rythme du contre-interrogatoire et

10 fournir des éléments de réponses au témoin. Ce

11 n'est pas une objection, Monsieur le Président.

12 Et clairement, quand on fait des

13 allégations du type de celles qui sont faites, on

14 est en droit de tester la base, sur la base

15 desquelles ces allégations-là sont faites.

16 LE PRÉSIDENT :

17 Ici, la Régie va retenir l'objection. La dernière

18 question n'ajoute rien à la précédente. La réponse,

19 je pense, du témoin elle est là. Ce qu'il reste,

20 là, ça pourra être traité en argumentation

21 facilement puis le temps d'audience et nous avons

22 ajouté des journées mais déjà le temps accordé est

23 énorme et s'il devait manquer du temps, la Régie va

24 être obligée de mettre fin à quelque part, avant

25 d'avoir terminé, là. À quelque part, ça va trop

1 loin l'ensemble des détails puis des admissions
2 qu'on recherche. Pour les fins d'une décision que
3 la Régie doit prendre à la fin de l'audience,
4 l'information commence à être très claire et il
5 restera l'argumentation.

6 Donc, la Régie va vous inviter à
7 poursuivre dans une autre ligne de questions.

8 Me ÉRIC DUNBERRY :

9 Alors, je vais interrompre mon contre-interrogatoire
10 sur ce sujet-là, Monsieur le Président.

11 Q.51 Mr. Roach, as a matter of principle, would
12 you agree with me that the process to
13 approve or amend a tariff is not a process
14 to resolve one particular client's
15 dispute; it is a process to establish
16 rules of general applications? Would you
17 agree with that statement?

18 R. I would agree with that, but I think in
19 many cases when general policies are
20 formed, a specific case brings the issues
21 to life and explains what the consequence
22 is and what the possible approaches are.

23 So, I agree we're here to do a
24 general policy. I just think the two
25 cases that I referenced bring it all to

1 life.

2 Q.52 And would you also agree that the
3 implementation on a daily basis of tariffs
4 and conditions is left to the transmission
5 provider, subject to customers' rights
6 under the tariff, but that the actual
7 daily on a going-forward basis
8 implementation of the tariff is left to
9 the transmission provider, again subject
10 to the various rights of any customers?

11 R. What I disagree with is that the issue
12 here is a daily issue. We're talking
13 about longer term contracts, longer term
14 rights, rights that can now, under the
15 Régie's decision especially, be renewed.
16 So, I don't think this is the Régie or any
17 of us talking about daily calculations.
18 We're talking about longer term firm
19 transmission rights.

20 9H56

21 Q.53 But my question was whether you agreed
22 with my general statement that it is not
23 the Régie's duty to implement Tariff and
24 Conditions on a going-forward basis or
25 operational basis?

1 R. No, I would disagree with that. I think
2 it is the regulators' position or right to
3 judge major changes like harmonization.
4 I'm not expecting the Régie in any form to
5 be there day-to-day, that's not what I'm
6 looking for, but I have every belief that
7 regulators would want to see beforehand
8 major changes like this, like the
9 harmonization proposal.

10 Q.54 I'm not - and again, please, and perhaps
11 my questions are not clear, Mr. Roach -
12 so, again, I'm not referring to changes to
13 the OATT; I am referring to the
14 application of the OATT, the
15 implementation as an operational or as a
16 commercial matter on a daily basis with
17 clients or with customers.

18 Now, would you agree with me that the
19 application, the implementation of the
20 Tariff is not the duty of the Régie but it
21 is the duty of the transmission service
22 provider subject to rights of customers,
23 based on your experience, Mr. Roach?

24 Me PAULE HAMELIN :

25 Monsieur le Président, je m'objecte, c'est la

1 troisième fois qu'on pose la question maintenant et
2 ça a été la même façon: Is it the Régie's duty to
3 implement Tariff on an operational basis? Il a
4 répondu avec les nuances. Ça fait la troisième fois
5 qu'on essaie de poser la même question.

6 Me ÉRIC DUNBERRY :

7 Monsieur le Président, le témoin ne répond pas, on
8 est tous là pour l'entendre. Je lui pose la
9 question à savoir... et ma consœur intervient
10 encore de façon inopportune, Monsieur le Président.

11 Je pose la question à savoir si
12 l'application du Tarif, il me répond un changement
13 important au Tarif doit être soumis à la Régie. Je
14 ne parle pas de changement au Tarif, je parle de sa
15 mise en oeuvre, de son application, et j'essaie de
16 faire des nuances pour permettre au témoin de mieux
17 me comprendre s'il ne me comprend pas. Mais la
18 question n'a pas été répondue. Le Tarif a, dans son
19 application quotidienne, des objectifs et je veux
20 savoir si le témoin est d'avis que l'application du
21 Tarif relève de la Régie ou si l'application du
22 Tarif relève du Transporteur. Selon lui.

23 Me PAULE HAMELIN :

24 Monsieur le Président, à nouveau, il a répondu en
25 faisant les nuances en fonction d'un changement de

1 l'OATT et le *day-to-day*; c'est même ses propres
2 mots. Alors, je pense qu'il a répondu à la question
3 et je suis obligée d'intervenir quand ça fait trois
4 fois qu'on pose la même question parce que mon
5 collègue semble dire qu'il n'a pas la... le témoin
6 ne répond pas à la question. Il répond à la
7 question mais mon collègue n'a pas la réponse qu'il
8 veut avoir.

9 LE PRÉSIDENT :

10 Alors, ici, la Régie va permettre la question. Je
11 crois par rapport aux deux questions précédentes il
12 y a une certaine ambiguïté quant à la position
13 exacte. Donc, la Régie permet la question.

14 Me ÉRIC DUNBERRY :

15 Q.55 So, Mr. Roach, could you answer the
16 question, please?

17 R. I think I have. Let's make the
18 distinction. This case and what I'm
19 talking about are cases in which there's
20 a major change in the method of
21 calculating ATC. Surely if that... I call
22 that implementation. And the Régie, or
23 any regulator, would want to be forewarned
24 and have a chance to review that before it
25 happens.

1 I don't have the picture that maybe
2 you're trying to create of the Régie
3 sitting behind the HQT personnel who
4 calculate ATC by the hour and saying yes,
5 no to every bit of arithmetic they do, I
6 don't want that. But implementation, to
7 me, and the implementation issue in this
8 case is a bigger issue of a major change
9 in the ATC calculation.

10 Q.56 So, if I understand what you're saying,
11 implementing a Tariff is like changing a
12 Tariff, is that what you say?

13 R. Surely implementing a Tariff includes
14 changes, major changes, in things like
15 calculating ATC, yes.

16 Q.57 Well, I would like to refer you to
17 decision D-2010-160, the one that you
18 refer in your report, this is the
19 Brookfield decision. I believe it's C-6-
20 73, it's a decision that you I believe
21 obtained a translation for. I would like
22 to refer you to pages... actually, it is
23 paragraphs 134 to 136. It's near the end,
24 page 34. So, I understand you have a
25 translation of that decision, Mr. Roach?

1 R. I do.
2 Q.58 So, I'll read this in French and you can
3 follow me with the translation:
4 « Il est en preuve que
5 le Transporteur a
6 contracté avec EBMI et
7 le Producteur des
8 services de transport
9 ferme sur le chemin
10 HQT-NE pour environ
11 1500 MW, alors que des
12 contraintes sur le
13 réseau voisin peuvent
14 réduire cette capacité
15 à 1 200 MW.
16 Même si la réduction
17 du service de
18 transport ferme sur le
19 chemin HQT-NE semble
20 hypothétique pour le
21 moment puisque les
22 deux clients en
23 service ferme du
24 Transporteur -- EBMI
25 pour 306 MW et le

1 *Producteur pour 1 200*
2 *MW -- réussissent à*
3 *faire transiter ces*
4 *quantités sur le*
5 *chemin en question, en*
6 *tant que clients du*
7 *service de transport*
8 *ferme du Transporteur,*
9 *EBMI et le Producteur*
10 *peuvent, en tout*
11 *temps, demander le*
12 *transit de la totalité*
13 *des quantités prévues*
14 *à leurs conventions de*
15 *service.*
16 *Le jour où un tel*
17 *transit ne pourra se*
18 *faire parce qu'ISO-NE*
19 *ne le permettra pas,*
20 *comme il n'y a pas de*
21 *restriction de*
22 *capacité sur le réseau*
23 *du Transporteur sur ce*
24 *chemin (2000 MW étant*
25 *disponibles), la*

1 logique voudrait que
2 ce soit ISO-NE qui
3 gère la restriction du
4 côté américain du
5 chemin HQT-NE en
6 appliquant les
7 dispositifs du tarif
8 OATT, dont les
9 dispositions sont
10 semblables à celles de
11 l'article 13.6 des
12 Tarifs et
13 conditions. »

14 Would you agree with that determination of
15 the Régie?

16 R. I heard the translation, but I don't know
17 where you are in this document, I'm sorry.

18 Me PAULE HAMELIN :

19 Un instant, Monsieur Roach.

20 R. I'm sorry.

21 Me PAULE HAMELIN :

22 Parce qu'encore une fois on vient de dire la
23 détermination de la Régie. On est dans la portion
24 de Monsieur le Régisseur Lassonde. Alors, je pense
25 qu'il faut faire les précisions.

1 Me ÉRIC DUNBERRY :

2 C'est vrai, tout à fait. Tout à fait, Monsieur le
3 Président, tout à fait. Tout à fait, non, je
4 l'avais... je suis allé directement aux paragraphes,
5 vous avez raison.

6 Q.59 So, Mr. Roach, I was referring to 134 to
7 136. So, are you...

8 Me PAULE HAMELIN :

9 Peut-être, malheureusement, on va peut-être être
10 obligé de relire le passage parce que je pense que
11 monsieur Roach n'était pas rendu, à moins qu'il nous
12 dise le contraire, et je ne suis pas sûre qu'il a eu
13 le bénéfice de la traduction, mais je veux juste
14 qu'on vérifie peut-être avec le témoin.

15 Merci.

16 On peut peut-être aussi référer avec la
17 traduction pour que ce soit plus rapide.

18 Me ÉRIC DUNBERRY :

19 Q.60 So, Mr. Roach, do you want me to read this
20 in French again or you have a translation,
21 so I assume it's a fair translation.

22 R. Yes, if I could take one minute to finish
23 the reading, then I...

24 Q.61 Sure, sure. Sure.

25 R. Okay, I've read it now.

1 Q.62 So, would you agree with this
2 determination made by Monsieur le
3 Régisseur Lassonde, more specifically in
4 paragraph 135.

5 R. I don't really know what exactly the
6 Commissioner is getting to here, so it's
7 difficult for me to agree. I take it as
8 more the Régie's full three Commissioners
9 were sceptical that how can the right ATC
10 be 1,200 when we can actually flow 1,500.
11 Perhaps Commissioner Lassonde is echoing
12 that here, but I'm not quite sure.

13 Q.63 Would you agree with me that, from an
14 operational standpoint, a posted firm ATC
15 value of, let's say, 1,200 megawatts may
16 not, as a matter of fact, mean that
17 customers won't be able to schedule
18 capacity on any given day in excess of
19 1,200 megawatts? From an operational and
20 scheduling standpoint.

21 R. If you're including non-firm, I'll agree.

22 Q.64 And in this case, Régisseur Lassonde is
23 referring to 306 megawatts, that is firm
24 or non-firm to your knowledge?

25 R. That is firm.

1 Q.65 Firm. And there is a 1,200 megawatts for
2 the producer, is that firm or non-firm, to
3 your knowledge.

4 R. Yes, I believe it is firm also.

5 Q.66 So, what Monsieur le Régisseur Lassonde is
6 saying, or maybe not referring to Monsieur
7 le Régisseur Lassonde but, as an
8 operational question on any given day, as
9 a scheduling matter or a commercial
10 matter, is it fair to say that, in spite
11 of the fact that there is a firm ATC value
12 of 1,200 megawatts posted, it is possible,
13 and in fact it's happening according to
14 this decision, that both EBMI and the
15 producer, and I quote:

16 « ... réussissent à
17 faire transiter ces
18 questions sur le
19 chemin en question. »

20 As a scheduling issue, as a commercial
21 issue, as a question of reality, would you
22 agree with me that this is a fair
23 determination based on the evidence you
24 have reviewed in the HQT-NE matter?

25 R. Yes, if that determination is that, in

1 reality, 1,500 megawatts of firm can get
2 through to New England, I agree with that
3 and that is part of the Régie's scepticism
4 and my scepticism of HQT saying that they
5 can only issue 1,200 megawatts of firm.

6 Q.67 Now, I would like to refer you back to
7 paragraphs 131, 132 and 133. So, we're in
8 the same section. And Monsieur le
9 Régisseur Lassonde says the following, and
10 I quote:

11 « EBMI a plaidé que
12 l'opération
13 d'harmonisation n'est
14 pas « qu'une pure
15 question de gestion de
16 réseau » et que le
17 Transporteur ne
18 pouvait se livrer à
19 une telle opération
20 sans « que la Régie en
21 examine le bien-fondé,
22 la pertinence,
23 l'impact sur les
24 droits des clients de
25 transport existants

1 *et, le cas échéant, en*
2 *baliser*
3 *l'implantation ».*

4 *Une fois réglée la*
5 *question du droit*
6 *d'EBMI de continuer*
7 *d'utiliser le*
8 *transport ferme au*
9 *renouvellement des*
10 *Conventions, ce que*
11 *doit faire le*
12 *Transporteur advenant*
13 *des circonstances*
14 *limitant la capacité*
15 *de transport ferme sur*
16 *le chemin HQT-NE est,*
17 *selon moi, une*
18 *question de gestion de*
19 *réseaux des deux côtés*
20 *de la frontière.*

21 *Même si, dans le cadre*
22 *d'une autre*
23 *demande... »*

24 *And we're referring to Phase 2 of this*
25 *case.*

1 « ... le Transporteur
2 veut ajouter des
3 dispositions aux
4 Tarifs et conditions
5 portant sur
6 l'harmonisation de la
7 capacité de son réseau
8 avec celle des réseaux
9 voisins, cela ne veut
10 pas dire qu'il devait
11 obtenir l'autorisation
12 de la Régie pour gérer
13 une situation pouvant
14 avoir un impact sur la
15 capacité de transport
16 ferme sur le chemin
17 HQT-NE. »

18 Have you followed me with that reading of
19 these paragraphs?

20 R. I followed along with the English
21 translation I have.

22 Q.68 Now, it appears to be that Monsieur le
23 Régisseur Lassonde in that section
24 believes that, on management or
25 operational issues, it is not the Régie's

1 role to substitute itself to the
2 transmission service provider and that the
3 transmission provider had the ability to
4 manage, to operate and deal with that
5 situation. Would you agree with that
6 determination?

7 R. I would agree, but it's very important to
8 point out that you can't interpret what
9 he's saying to make a contradiction. As
10 I read it, in paragraph 132, the
11 Commissioner is saying: Look, once we
12 establish that Brookfield has the right to
13 firm transmission, and that would mean
14 that there are 1,500 megawatts or more of
15 firm transmission available on the
16 Canadian side, once we've made that
17 determination, if on some given day there
18 doesn't seem to be 1,500, then perhaps HQT
19 can take care of that through curtailments
20 under section 13.6. I would read that
21 into it. But he surely can't be saying:
22 Once the Régie determines that the right
23 ATC is 1,500, that HQT then can then
24 undermine that by cutting it to 1,200.

25 10H13

1 What the Commissioner is saying here
2 can't mean that. But if he's simply
3 saying, and he eventually gets to that
4 kind of... when he mentions 13.6 later,
5 he's simply saying: We, as a Régie, will
6 set it at, you know, if we believe it's
7 1,500, then under Section 13.6 of the
8 ongoing tariff, HQT has a right to curtail
9 on a *pro rata* basis if something happens
10 where they can't do the full 1,500.

11 Q.69 Are you under the impression that the
12 Régie in that decision determined that the
13 proper ATC was 1,500 megawatts?

14 R. No, I think I'm saying that they
15 determined that the denial of rollover was
16 rejected and thereby that HQT's
17 harmonization plan was rejected.

18 Q.70 Your reading of that decision is that the
19 harmonization, not the allocation between
20 two clients, you're reading of that
21 decision is that the harmonization was
22 rejected. Is that what you just said?

23 R. Yes, I've said that before. I think that
24 the Régie correctly found the consequences
25 of that harmonization plan to breach the

1 contract and therefore they rejected the
2 harmonization plan.

3 Q.71 And could you refer us to any paragraph in
4 the decision that says that?

5 Me PAULE HAMELIN :

6 Monsieur le Président, on a fait tout cet exercice-
7 là la dernière fois et je peux vous sortir les
8 références aux notes. On a fait l'exercice la
9 dernière fois. Alors, on a fait les distinctions.
10 J'ai même, moi-même, référé à certains passages. Il
11 a expliqué l'ensemble du contexte. On l'a fait la
12 dernière fois. Alors, je considère que ça a été dit
13 et redit.

14 Me ÉRIC DUNBERRY :

15 Monsieur le Président, je suis en désaccord. Le
16 témoin répond. Je réagis aux réponses du témoin
17 également. C'est ça évidemment le contre-
18 interrogatoire. Le témoin prend des positions
19 auxquelles je réagis. Je ne pense pas qu'il avait
20 pris cette position-là de cette façon-là lors du
21 dernier contre-interrogatoire qui ne s'est pas
22 terminé. Alors, ma question est assez pointue,
23 Monsieur le Président.

24 LE PRÉSIDENT :

25 Un instant. La Régie vous permet de continuer.

1 Me ÉRIC DUNBERRY :

2 Q.72 So, Mr. Roach, could you refer us to any
3 specific language in that decision which
4 rejects the July 2009 harmonization plan?

5 R. Again, I agree with Ms. Hamelin, I
6 answered this. I read this in my
7 transcript from the previous time and I
8 said that I thought that the Régie's
9 decision made this loud and clear.

10 And I would point to several parts of
11 that decision. One is certainly that the
12 Régie found that there were no reliability
13 problems that would justify curtailment.

14 You know, I think the fact that there
15 was a rollover right, a right to renewal,
16 that would lead to 1,500 megawatts of
17 firm, despite the fact that the
18 harmonization plan says that that firm
19 level should be 1,200.

20 Those are examples. I think that
21 decision, again rightly, looked at the
22 consequences of harmonization and, by
23 rejecting the implementation of
24 harmonization, rejected the harmonization
25 concept the way that HQT is applying it.

1 Q.73 So, the answer to my question is that...
2 what is the answer to my question, Mr.
3 Roach? I'm simply asking for a paragraph
4 number or a page or...

5 R. Again, I think all of it, the statement
6 that there is no reliability problem or
7 the statement that Brookfield has a right
8 to its full firm transmission, all of
9 those things say that the harmonization
10 implementation by HQT is rejected.

11 Q.74 Okay. Let's move on to... I'd like to
12 show you now a decision by the Régie on
13 another issue. It's D-2008-136 rendered
14 in October 2008, Mr. Roach. We'll provide
15 you with a copy of that decision. It's a
16 decision that was rendered by messieurs
17 les régisseurs Théorêt, Lassonde and
18 Turgeon in the NLH complaint proceeding.
19 I'd like to refer you to the Régie's
20 decision, page 3.

21 The issue was with respect to the
22 determination of the ATC. And on page 3
23 of that decision, the Régie said the
24 following and I will read this to you.
25 So, it starts at the bottom, after the

reference to the two articles of the Act:

« Ainsi, dans le cadre
de l'examen d'une
plainte, la Régie ne
siège pas en appel
d'une décision du
Transporteur sur, par
exemple, la capacité
de transport
disponible sur son
réseau.

L'établissement de la
capacité de transport
disponible sur le
réseau du Transporteur
relève de sa
responsabilité dans le
respect des
dispositions des
Tarifs et conditions.
Lorsqu'un différend
survient sur une telle
question, la Régie
doit vérifier si les
dispositions des

1 *Tarifs et conditions*
2 *ont été correctement*
3 *appliquées et si tel*
4 *n'est pas le cas elle*
5 *peut ordonner au*
6 *Transport de remédier*
7 *à la situation. »*

8 Again, as a matter of principle, and I'm
9 not referring to this case because of its
10 facts but I'm referring it to as a matter
11 of principle, would you agree with me that
12 it is not the Régie's role but it is the
13 transmission service provider's role to,
14 and I quote, establish...

15 « *Établissement de la*
16 *capacité de transport*
17 *disponible. »*

18 To establish the ATC value subject to a
19 customer's right to file a complaint but
20 that, as a matter of principle, it is not
21 the Régie's role but it is the
22 transmission service provider's role or
23 responsibility, which is the word used,
24 the word is responsibility to establish
25 ATC value based under your experience and

1 your understanding of practices, Mr.
2 Roach?

3 Me PAULE HAMELIN :

4 Alors, Monsieur le Président, avec votre permission,
5 on réfère à une décision sans nécessairement
6 demander tout d'abord à l'expert s'il a déjà pris
7 connaissance de cette décision-là. On nous la
8 montre en référant à un extrait et en résumant à la
9 portée de la décision.

10 Je considère que ce n'est pas très, très
11 juste pour le témoin d'avoir à commenter
12 relativement à cette décision-là. Alors, je vais
13 demander à mon confrère s'il pose la question de ne
14 pas nécessairement référer à cette décision, à
15 l'extrait, mais s'il veut le paraphraser et on fera
16 l'argumentaire devant la Régie dans nos plaidoiries
17 sur quel est le rôle parce que c'est un des sujets
18 en litige, quel est le rôle du Transporteur dans le
19 présent dossier?

20 Il est devant vous avec une demande
21 d'amendement sur C-1 et la position de mon collègue
22 c'est qu'il n'a pas à faire de demande d'amendement
23 pour gérer son ATC. C'est sa position, on le
24 plaidera.

25 Maintenant, de venir utiliser cet extrait-

1 là, sans nécessairement avoir tout le contexte et
2 nous permettre de lire au complet la décision, je
3 m'objecte à cette façon-là de faire.

4 Me ÉRIC DUNBERRY :

5 Alors, Monsieur le Président, je ne peux qu'ajouter
6 ce que... je ne peux rien rajouter à ce que j'ai
7 déjà dit.

8 Maître Hamelin ne se lève pas pour faire
9 une objection au sens strict. Elle se lève pour
10 exprimer son désaccord sur la façon dont j'ai référé
11 le témoin à cette décision-là. Tout au cours de ces
12 auditions-là, maître Hamelin et d'autres procureurs
13 ont référé les témoins à des extraits de décisions.

14 Je pense bien avoir situé cette décision-
15 là dans un contexte de plaintes où la question en
16 litige était justement d'un calcul de détermination
17 de l'ATC. Je réfère à cette décision-là et à un
18 seul paragraphe où on énonce un principe et je
19 demande si le témoin est en accord avec le principe
20 qui est communiqué par cette décision-là.

21 Je vous sou mets qu'il n'y a rien dans ça
22 d'inapproprié. Si le témoin veut prendre
23 connaissance de toute la décision, il pourra le
24 faire. Il n'y a aucune difficulté avec ça, Monsieur
25 le Président, et encore une fois, ma consoeur et le

1 témoin ont déjà à trois ou quatre reprises dit que
2 sa réponse était celle qu'il avait entendue du
3 procureur de Brookfield.

4 Alors, encore une fois, vous avez eu une
5 intervention qui guide le témoin vers une réponse
6 qui est celle que le procureur a soumise.

7 Je vous sou mets que ce n'est pas
8 approprié, Monsieur le Président.

9 LE PRÉSIDENT :

10 Alors, la Régie va prendre l'objection en délibéré.
11 Elle va prendre la pause de l'avant-midi. Nous
12 allons revenir à 10 h 45.

13 Me ÉRIC DUNBERRY :

14 Merci.

15 SUSPENSION DE L'AUDIENCE

16 10H52

17 REPRISE DE L'AUDIENCE

18 LE PRÉSIDENT :

19 LA GREFFIÈRE :

20 Veuillez prendre place, s'il vous plaît.

21 LE PRÉSIDENT :

22 Alors, reprise de l'audience. La Régie va permettre
23 la question. Maître Dunberry.

24 Me ÉRIC DUNBERRY :

25 Q.75 Mr. Roach, could you answer the question?

1 LE PRÉSIDENT :

2 Un instant, s'il vous plaît. Maître Sicard.

3 Me HÉLÈNE SICARD :

4 Bonjour, Monsieur le Président. Alors, on m'a fait
5 rapport de vos mots ce matin. Nous serons de retour
6 soit mercredi matin ou au cours de la journée
7 mercredi, selon l'avancement des travaux. Merci.

8 LE PRÉSIDENT :

9 Très bien.

10 R. Okay. So, I'm happy to try on this one
11 paragraph, but I'm sure the Régie
12 understands it to really give you a firm
13 interpretation of this Order I'd have to
14 know and read the whole Order and some
15 background things. But in order to give
16 on this one paragraph, could I please get
17 a translation of just the last two and
18 half lines where it begins on page 4 with
19 *La Régie doit* to start and finishing to
20 the end of the paragraph?

21 Me ÉRIC DUNBERRY :

22 Q.76 Yes:

23 « *La Régie doit*
24 *vérifier si les*
25 *dispositions des*

1 *Tarifs et conditions*
2 *ont été correctement*
3 *appliquées et si tel*
4 *n'est pas le cas, elle*
5 *peut ordonner au*
6 *Transporteur de*
7 *remédier à la*
8 *situation. »*

9 And again, to make sure you understand the
10 context, I think I've mentioned it, but
11 this was a complaint process. So, that
12 may give you some additional
13 understanding, but it was a complaint case
14 and the Régie made that comment but the
15 question really, and I never do this as a
16 stepping stone but the question is more as
17 a matter of principle and maybe I can
18 simplify the question for you, Mr. Roach.
19 As a matter of principle would you agree
20 that determination of an ATC value is the
21 responsibility of the transmission service
22 provider subject to any customer's rights
23 under the tariff?

24 R. Again, I'm going to answer the question
25 that referred me to this paragraph and my

1 answer is that with that phrase where the
2 Commission is saying: The Commission must
3 verify the application of the tariff and
4 if it finds that it's not a faithful
5 application, then the Commission will come
6 back. I can certainly agree with that
7 principle. I think that's another way of
8 saying some of what I'm saying in this
9 proceeding, that the Commission does have
10 to define the rules of the tariff and
11 judge whether they are being faithfully
12 applied.

13 Q.77 Okay, but that is the second part of that
14 paragraph and we understood that, this
15 being a complaint case, the purpose of
16 that case was to determine whether the
17 tariff had been properly applied or not.
18 That is a second component of that
19 paragraph.

20 But my question to which I believe
21 you have not answered is the first part.
22 The first part is to say that it is the
23 responsibility of the transmission service
24 provider as a transmission service
25 provider to make the determination of the

1 ATC value that they will post on any given
2 intertie.

3 The Régie can come after and deal
4 with the complaint but my question is very
5 specific, that as an operational matter,
6 as a commercial matter, as a practical
7 matter, it is a transmission service
8 provider that does establish the ATC
9 posted on its intertie.

10 R. Again, I don't read that. I don't hear
11 that in this paragraph. I hear that the
12 Régie is in control of the principles of
13 the Tariff and surely, no one in this
14 room, including me, is asking the Régie to
15 go into the operating centre and check the
16 arithmetic of the person determining ATC.

17 But what I had translated, I can
18 agree with that. I can agree with what
19 the Régie was ordering here, that is that
20 it is there to verify that the tariff as
21 determined by the Régie is being
22 faithfully applied.

23 Q.78 Okay. Let's not use that decision. Okay,
24 you can put it aside. Now, you've been in
25 the industry for a while, Mr. Roach.

1 Based on what you have witnessed, based on
2 your experience, is it not a fact that, in
3 practice, it is the transmission service
4 provider's responsibility to establish and
5 post the ATC value on its OASIS, subject
6 to customer's rights, sure, but as a
7 matter of operation, as a commercial
8 matter, as a practical matter, based on
9 industry practices, would you agree with
10 me that it is the transmission service
11 provider's responsibility?

12 R. I'm going to disagree because you keep
13 forgetting what to me is the most
14 important phrase which is it's HQT or the
15 transmission provider's duty to faithfully
16 implement the Tariff.

17 Q.79 We will move on to the next question, Mr.
18 Roach. Thank you for your comment. I'd
19 like now to look at some of the solutions
20 that you've actually suggested. If we
21 move to page 27 of your report, paragraph
22 51, I believe, it's a fairly long page or
23 a fairly long paragraph, I should say, but
24 essentially you are suggesting options in
25 the event of an insufficient ATC value and

1 you refer to certain parts of FERC Order
2 and you basically suggest that you can
3 either build additional capacity or
4 curtail and allocate between competing
5 clients. Would that be a fair summary of
6 the initial options that you're
7 considering on this page, billed or
8 curtailed?

9 R. I can say yes, but let's be clear. That's
10 FERC speaking. I think I'm okay with
11 that, but these pages are saying those are
12 the two options that FERC lays out.

13 Q.80 Okay. Now, looking at the Québec
14 interties, and you may or may not be aware
15 of that fact, we'll see, but when you
16 wrote your report, were you aware that ATC
17 values on the Québec side, in all cases,
18 for all interties, I believe, were either
19 equal or in excess of the ATC values on
20 the neighbouring systems, posted firm ATC
21 values I mean? Were you aware of that
22 fact when you made that report on
23 September 28, I believe, 2010?

24 R. No, again, I focused on the Québec-New
25 England intertie where I knew the 2,000

1 megawatts ATC on the Canadian side was
2 higher than on the New England side.

3 Q.81 Okay. Now, considering the fact - and
4 that's my suggestion as an hypothesis -
5 that the constraints in all cases are on
6 the U.S. side, they are not on the Québec
7 side, in other words, the highway to use
8 the expression you used in, the bridge,
9 you referred to a bridge in your testimony
10 in the BCTC case, you remember you and I
11 read an extract, you referred to a
12 bridge...

13 R. Yes.

14 Q.82 ... a small bridge and a big bridge.
15 Assuming that the bigger bridge, the
16 bigger road is on the Québec side, I guess
17 you and I will agree that building on the
18 Québec side would be irrelevant. It would
19 not solve the issue because the constraint
20 is on the U.S. side?

21 R. I can go with that, yes.

22 Q.83 Now, paragraph 66, you make a suggestion
23 on how things could be allocated and you
24 invite the Régie to consider this as an
25 option in this case, in this rate case,

1 paragraph 66 on page 34. And again, you
2 are making suggestions on approaches that
3 this Régie should be considering and
4 retaining as part of its suggested wording
5 for the various documents and schedules
6 and provisions of the OATT. So, at
7 paragraph 66 you say the following:

8 *« An approach that I*
9 *think meets both of*
10 *these requirements,*
11 *fairness and economic*
12 *efficiency is to*
13 *allocate the remaining*
14 *firm ATC on the*
15 *Canadian segment in*
16 *proportion to the*
17 *share of firm*
18 *transmission, each*
19 *customer has secured*
20 *and paid for on the*
21 *New England segment on*
22 *the intertie. For an*
23 *example, put simply,*
24 *since EBMI has secured*
25 *306 megawatts on firm*

1 *transmission services*
2 *on the Canadian*
3 *segment and 282*
4 *megawatts on the New*
5 *England segment of*
6 *Phase 2, EBMI should*
7 *be allocated*
8 *approximately 280*
9 *megawatts of the firm*
10 *ATC remaining after*
11 *harmonization. »*

12 That is one of the options that you are
13 suggesting. Are you still advancing that
14 suggestion today?

15 R. Yes, that's one of the options.

16 Q.84 Okay. And I guess that option is based on
17 the premise that it is possible to reserve
18 firm capacity on the American side of the
19 intertie. Is it not?

20 R. It is the fact and what my understanding
21 is of the Québec-New England intertie,
22 yes.

23 Q.85 Okay. Now, are you aware of the fact
24 that, for instance, on the New York
25 intertie, it is not possible to secure and

1 pay for reserved capacity the way you
2 describe it here for long term firm point-
3 to-point capacity on the New England
4 intertie, that this is actually not
5 possible on the New York intertie to give
6 that example? Were you aware of that?

7 R. Yes, I think I understand that and that
8 was the case in Alberta also in the
9 British Columbia case.

10 Q.86 So, when you are suggesting this option
11 which is matching firm reserve capacity on
12 both sides of the intertie, that would
13 only work for interties where you can
14 actually reserve firm capacity on the
15 American side, would it not? That option
16 would only work, would only apply when you
17 can reserve on both sides?

18 R. Yes, I think that makes sense.

19 Q.87 Okay. So, that option would not be
20 possible for the New York intertie?

21 R. That's okay. That's fine. I think again
22 the Commission can have a general policy,
23 but have solutions that are tailored to
24 the interties.

25 Q.88 Okay. But as a matter of policy or

1 principle, that option would not be
2 applicable to all situations? It cannot
3 be a general principle; it can only be a
4 solution in one set of specific
5 circumstances?

6 R. The general principle being espoused here
7 is that when HQT finds itself in a
8 position to curtail, it should consider
9 alternative ways of curtailment. I just
10 put this out as one that I thought merited
11 some sense but, yes, if you can't get firm
12 on both sides, then you can't implement
13 this particular option.

14 Q.89 Okay. Now, I was looking for language in
15 FERC Order 890 that actually suggests such
16 an option. Were you able to find for us
17 or did you have any passages of FERC order
18 of any of the Orders 890 that would
19 discuss this kind of a matching approach
20 to allocate ATC by simply matching firm
21 values on both sides of the intertie? Has
22 FERC discussed that in any detail?

23 R. No, FERC wouldn't or hasn't considered
24 this specific example. FERC would always
25 go back to Section 13.6 which calls for

1 *pro rata* curtailment, but that doesn't
2 mean they wouldn't entertain some, as you
3 say, imaginative solution. But FERC goes
4 back to Section 13.6.

5 Q.90 So, aside from FERC, are you aware whether
6 that solution that you're suggesting has
7 been endorsed by any other court in the
8 United States, to your knowledge?

9 R. I'm not aware of anyone endorsing it.

10 Q.91 Okay. Would the answer be the same with
11 the solution in paragraph 69 where you
12 suggest, I would say, a variation of the
13 same theme? I think you would... unless
14 it is exactly the same thing, when I read
15 that, I... is that solution the exact same
16 solution? What you describe in 69, is
17 this what you had in mind when you wrote
18 66, is this the same approach?

19 R. It's the same approach. This is making
20 the argument for that approach.

21 Q.92 Okay.

22 R. This is one of the facts.

23 Q.93 Okay. Now, in paragraph 68, you make
24 another suggestion with, I think it would
25 be a bit of a *pro rata* basis, would that

1 be, considering both firm reserved
2 capacities on both sides and making a
3 radio based on what the client would have
4 reserved as firm and non-firm in this
5 application. What you describe in
6 paragraph 68, would that be the exact same
7 thing we just discussed in paragraph 66?

8 R. It is the same approach. Paragraphs 67,
9 68 and 69 are giving three arguments why
10 this approach, and that we just discussed,
11 might be accepted. You know, it's fair,
12 economically efficient and consistent.

13 11H09

14 Q.94 On page... actually, it's paragraph 17,
15 you are referring to a document and to the
16 possibility that the actual ATC value to
17 be posted might be 1,400 megawatts on the
18 American side of that intertie and you
19 refer to a document that has been
20 identified as a footnote.

21 Is it your understanding that there
22 is an ongoing debate in the United States
23 with respect to whether the value should
24 be 1,200 megawatts or 1,400 megawatts? On
25 that intertie?

1 R. I'm not sure that I would characterize it
2 as a debate on the intertie. I think that
3 there is continued discussion and I think
4 that would be a good thing to continue.
5 But I think New England ISO has now
6 decided that it is not going to seek what
7 HQT calls harmonization on any of the
8 interties. It has issued its FERC-
9 compliant, you know, OATT, compliant with
10 Orders 890, and it says that it's not
11 going to seek to make them consistent.
12 So, I can't argue that it's a debate at
13 this point.

14 Q.95 I'm sorry, are you saying that the debate
15 has been resolved and that the 1,200
16 megawatts is going to remain or are you
17 suggesting that there are ongoing
18 discussions on the American side?

19 R. Let's split it out. I think there's
20 ongoing discussions... because the limit
21 on the American side is not about the
22 transmission line, it's about reserves.
23 What happens is that whatever they set
24 that New England side transmission
25 capability as like 1,200 megawatts, that

1 would become their largest contingency so
2 they need to have reserves of 1,200
3 megawatts. If they raise the level to
4 1,500 or 1,400, then they would need new
5 reserves. That's what's driving it.

6 So, what I'm trying to say is I think
7 there's continued discussion, but as far
8 as whether they're going to try to
9 harmonize with the Canadian side, my
10 understanding from the New England ISO is
11 that they're not going to do that on their
12 interties.

13 Q.96 I would like now to just follow on that
14 answer by referring you to paragraph 31 of
15 your report. And you do say that, as far
16 as your understanding of that document is,
17 the ISO has concluded that there was no...
18 and I'm quoting you now, paragraph 31,
19 last line, just before the quote, and you
20 say:

21 « As already quoted in
22 the Summary, an ISO
23 New England document
24 dated August 30, 2010
25 stated that there was

1 *no need to coordinate*
2 *ATCs on the Québec-New*
3 *England intertie.*
4 *Specifically, the*
5 *document said: »*

6 And you quote.

7 That document I believe has been
8 produced, I have a copy here. It's the
9 Tariff itself I believe. And the quote is
10 there, there's perhaps no need to refer to
11 that document, but it's in the record.

12 Me PAULE HAMELIN :

13 C-6.78

14 Me ÉRIC DUNBERRY :

15 Q.97 C-6.78. And then, you make the following
16 allegation, paragraph 32, Mr. Roach, and
17 you refer to that quote and you say:

18 *« All I have is this*
19 *quote and I do not*
20 *want to read too much*
21 *into a single*
22 *sentence. »*

23 And then you give:

24 *« One interpretation*
25 *is that ISO New*

1 *England sees no need*
2 *for harmonization on*
3 *this Intertie because*
4 *there has been an*
5 *inconsistency in ATCs*
6 *on the two segments of*
7 *the Intertie for many*
8 *years. Further, ISO*
9 *New England points to*
10 *the fact that this is*
11 *a "controllable DC"*
12 *line, indicating the*
13 *direct current (DC)*
14 *flow would have to be*
15 *deliberately converted*
16 *to alternating current*
17 *(AC) to impact the*
18 *broader ISO New*
19 *England AC system.*
20 *Perhaps this is a call*
21 *to keep things as they*
22 *are. »*

23 Now, am I right in stating that this
24 entire paragraph is based only on your
25 reading of that quote? You refer to a

1 single quote and to a single document. Is
2 it fair to say that this suggestion that
3 perhaps it is a call to keep things as
4 they are is based on that quote only?

5 R. Yes, I was just being cautious of taking
6 this one paragraph and giving it grand
7 importance. But again, a moment ago, I
8 mentioned that apparently now the New
9 England ISO and its Tariff has said that
10 it's not going to seek again what HQT
11 characterizes or calls harmonization, it's
12 not going to seek it on any of its
13 interties.

14 Q.98 Surely, you will agree that ISO New
15 England speaks on behalf of itself, they
16 do not speak on behalf of TransÉnergie, am
17 I right?

18 R. That's correct.

19 Q.99 So, when they say that... when you read
20 into that quote that they do not need or
21 intend to coordinate, it's your
22 interpretation of their position, that
23 they don't need to coordinate on their
24 side where they have actual decision-
25 making powers, is that correct?

1 R. They're not speaking for HQT; I think
2 they're speaking for themselves. But
3 what's relevant to the Régie is that here
4 is a FERC-jurisdictional entity saying
5 that: Here's our Tariff under the Orders
6 890, which called for consistency, but we
7 don't see the need to go after that
8 consistency to make changes for that.
9 That's why it's relevant.

10 Q.100 So, I just want to follow this. If they
11 wanted to coordinate with TransÉnergie,
12 they would actually have to raise their
13 ATC value, right, because it's right now,
14 as you said, driven by a contingency
15 limit, and therefore if they had to
16 coordinate with us, they would actually
17 raise their ATC value to a higher level.
18 Would that not be the case?

19 R. I think that's right.

20 Q.101 So, what you're saying is that this quote
21 means that they've decided or that perhaps
22 this is a call for themselves on the
23 American side not to raise their ATC value
24 beyond 1,200 megawatts, that they have no
25 intention of raising 1,200 megawatts above

1 to reach a higher level. Is that a fair
2 description of what this means?

3 R. That's fair but partial because what
4 they're saying is that they're not going
5 to seek consistency, that's what's
6 interesting here. A FERC-jurisdictional
7 entity is proposing a Tariff or actually
8 has a Tariff under 890 where it is not...
9 it's officially not seeking consistency,
10 apparently because it sees no good in it,
11 it sees no benefit in it.

12 Q.102 And when you say they see no good, they
13 see no benefit, all of this again is based
14 on your interpretation of that quote?

15 R. ...

16 Q.103 Mr. Roach?

17 R. That's correct, along with the Tariff now
18 where it says this more broadly to apply
19 to all of its interties.

20 Q.104 Now, what I understand you're saying is
21 that because... because your
22 interpretation is that they don't intend
23 to raise their 1,200 megawatts to a higher
24 level, this means that there would be no
25 need for TransÉnergie to reduce its 2,000

1 megawatts to a lower level. Is that what
2 you're suggesting?

3 R. I'm saying that's a possibility and it
4 should be considered that, again, as I say
5 here and you read, what New England is
6 doing, and it's right under the
7 jurisdiction of FERC, is saying: We're not
8 going to take action on this. And perhaps
9 it's because transmission capability on
10 the Canadian side is being determined
11 differently on a fundamentally different
12 basis than on the American side.
13 Transmission on the Canadian side, what's
14 the capacity of that line, on the New
15 England or American side, it's how does
16 this affect reserves.

17 Q.105 Now, again, did you conduct any
18 investigation or perform any personal
19 analysis, contacting the ISO
20 representatives, to see whether your
21 interpretation of these three lines had to
22 be... was confirmed by ISO New England?
23 Did you personally verify any of this by
24 calling people at the ISO?

25 R. We did an analysis including reviewing the

1 Tariffs and looking for documents and
2 looking at the confidential documents. I
3 did not call. I can't tell you for sure
4 that my colleagues did not call.

5 Q.106 Now, you understand that the 1,200
6 megawatts is based on a contingency limit.
7 You understood that from your previous
8 experience in the complaint process, I
9 understand?

10 R. Yes, contingency leading to reserve
11 requirement, that's right.

12 Q.107 Yes. Do you think the fact that this
13 1,200 megawatts is driven by a
14 contingency, a reliability issue, is
15 relevant in assessing whether there would
16 be a need to coordinate above 1,200
17 megawatts? Do you think that the nature
18 of that limit has any relevance in
19 determining whether they can go up or not?

20 R. Of course, yes.

21 Q.108 And to your knowledge, would it be
22 possible for them to go higher than 1,200
23 megawatts in the current circumstances,
24 given that contingency issue?

25 R. Sure, they could add reserves. They could

1 say...

2 Q.109 They could build?

3 R. No, no. No, no. It's generation
4 reserves. I mean the way I'm reading this
5 and the way we understand it is that
6 they're saying that: If we bring power at
7 1,200 megawatts over the Québec-New
8 England tie, that becomes our largest
9 contingency and when we set the level of
10 generation reserves, how much power plant
11 capacity we need at the ready, that's
12 dictating.

13 So, what they would have to do is...
14 my understanding is that they would have
15 to increase the reserves they're willing
16 to carry. So, it doesn't have to do with
17 building a transmission line, what it has
18 to do is increasing the power plant
19 capacity they have at the ready.

20 Q.110 My question was perhaps not... I meant in
21 the current circumstances, without, you
22 know, adding generation or the kinds of
23 investments to which you just referred.
24 I meant in the context of a coordination
25 initiative through consistency

1 requirements, do you think that in the
2 current circumstances, applying FERC's
3 requirements for consistency, it would be
4 possible for them to raise their current
5 ATC postings above 1,200 megawatts given
6 the nature of that contingency in the
7 current circumstances?

8 R. Let's split it out. The first part of
9 your question said in the context of
10 consistency. And we should be clear, New
11 England ISO is saying it's not pursuing
12 consistency. But the second half of your
13 question is if they're not willing to
14 increase reserves, can they increase that
15 1,200 megawatts? I think that's fairly
16 answered that they could not. That's the
17 issue. Although I'll add that like the
18 Régie's point, New England knows that that
19 line operates above 1,200 megawatts, they
20 see it. So, I'm sure they're taking that
21 into account too.

22 Q.111 Are you suggesting that ISO New England is
23 exempted from FERC's requirement to pursue
24 consistent ATC postings?

25 R. No, not at all. I'm saying that they

1 filed a Tariff which says they're not
2 going to pursue it. And apparently that
3 is FERC compliant.

4 Q.112 And all of this you read in that quote
5 obviously refers to their decision on the
6 U.S. side concerning the ATC postings on
7 the U.S. side?

8 R. I apologize, I didn't understand your
9 question.

10 Q.113 Your entire interpretation of that quote
11 refers to the ISO's decision concerning
12 postings of ATC values on the American
13 side of that intertie?

14 R. That's right, and their full Tariff
15 response now.

16 Q.114 You also make a point, at the end of your
17 presentation, concerning the word « new
18 clients » or « new existing clients ».
19 It's in paragraph 25, concerning the use
20 of the word « new » in section 2.2. You
21 said the following...

22 R. Excuse me, could I catch up for one quick
23 second?

24 Q.115 Yes, sure.

25 R. You said paragraph 25?

1 Q.116 Yes.

2 R. I got it, sorry.

3 Q.117 And you say:

4 « Finally, HQT makes a
5 change to Section 2.2
6 which is not required
7 by the 890 Orders.
8 HQT strikes the word
9 "new" before "Eligible
10 Customer". The Régie
11 should require HQT to
12 explain its intent
13 with the impact of
14 this change. »

15 Were you provided with - and maybe the
16 answer is in the undertakings, but I
17 apologize if you've answered and I'm
18 asking it again but - have you read...
19 well, let me show it to you. HQT-29, may
20 I ask you to consider it and we'll have a
21 question for you. It's HQT-29, document
22 3 and document 6. Yes, so we will provide
23 you with copies, Mr. Roach.

24 11H25

25 Me PAULE HAMELIN :

1 Je pense que dans la réponse à l'engagement 11 on
2 réfère au document justement HQT-29. On a parlé de
3 document 3.

4 Me ÉRIC DUNBERRY :

5 Oui.

6 Me PAULE HAMELIN :

7 Et document 6.

8 Me ÉRIC DUNBERRY :

9 Et la réponse c'était?

10 Me PAULE HAMELIN :

11 Document 3, et document 29.

12 Q.118 So, Mr. Roach, if you take the first
13 document, HQT-29, document 3, questions
14 were asked concerning the word « new » and
15 its removal. It's page 42 of 56, HQT-29,
16 document 3, question 36.2. So, let me
17 read this in French in case you didn't get
18 a translation of that. So, the question
19 was, and I quote:

20 « Pourquoi HQT demande
21 d'enlever la notion de
22 « nouveau » client à
23 l'article 2.2?
24 S'agit-il d'un
25 changement requis en

1 *vertu des ordonnances*
2 *890 et suivantes de la*
3 *FERC? Veuillez*
4 *expliquer. »*

5 Et la réponse:

6 *« Ce changement n'est*
7 *pas spécifiquement*
8 *requis en vertu de*
9 *l'ordonnance 890 de la*
10 *FERC. Il vise à*
11 *clarifier l'intention*
12 *du Transporteur telle*
13 *qu'elle apparaissait*
14 *dans sa réponse à la*
15 *question 13.1 de la*
16 *demande de*
17 *renseignements no.1 de*
18 *la Régie (pièce HQT-8,*
19 *doc.1, p.15). »*

20 Et je vais lire la question suivante qui
21 est liée:

22 *« Qu'est-ce qui*
23 *justifie*
24 *l'interprétation du*
25 *Transporteur à l'effet*

1 que le droit de
2 préemption devrait
3 s'appliquer à une
4 demande concurrente
5 « d'un client
6 existant » par
7 opposition à un
8 « nouveau client » du
9 service de transport?
10 Veuillez fournir toute
11 source justifiant
12 cette position. »

13 Et la réponse:

14 « Le Transporteur ne
15 trouve aucune
16 justification dans le
17 texte de l'ordonnance
18 890 ou dans les
19 pratiques commerciales
20 pour limiter le droit
21 de préemption aux
22 seuls cas où une
23 demande concurrente
24 provenait d'un client
25 admissible n'ayant

1 *aucune convention de*
2 *service en vigueur. »*

3 La question 36.4 réfère également à cet
4 article-là. Et il y a une dernière
5 question et une dernière réponse qui est
6 spécifiquement liée à la question
7 précédente, à la page 44 de 56, réponse
8 36.7R. Question:

9 *« Would the striking*
10 *the word "new" give*
11 *existing customers*
12 *like HQP, the ability*
13 *to outbid in length*
14 *other transmission*
15 *customers for ATC*
16 *after reduction in*
17 *calculated ATC? »*

18 Et la réponse:

19 *« Non. L'élimination*
20 *du mot « nouveau »*
21 *vise à permettre aux*
22 *clients existants*
23 *d'exercer la priorité*
24 *conférée par cette*
25 *disposition à l'égard*

1 de toute demande
2 concurrente, qu'elle
3 émane d'un nouveau
4 client ou d'un autre
5 client existant.

6 Lorsque le réseau ne
7 peut pas répondre à
8 toutes les demandes de
9 service de transport,
10 un client existant ne
11 peut pas, en déposant
12 une demande de service
13 de transport
14 concurrente, à plus
15 long terme, outbid in
16 length, empêcher un
17 autre client existant
18 d'exercer sa priorité
19 de renouvellement. »

20 We could also refer to HQT-29, document 6,
21 which provides a final comment on this
22 issue. It's page 3 of 71. HQT-29,
23 document 6, Mr. Roach, page 3 of 71.

24 Question:

25 « Veuillez préciser

1 *les raisons qui ont*
2 *motivé le Transporteur*
3 *à modifier sa*
4 *proposition pour*
5 *modifier l'article*
6 *2.2. »*

7 Et je vous laisse la lire, Monsieur Roach.
8 En fait, je vais vous la lire pour la
9 traduction:

10 *« Cette disposition*
11 *est modifiée afin de*
12 *clarifier le texte*
13 *initialement proposé*
14 *par le Transporteur,*
15 *en particulier au*
16 *niveau de l'effet dans*
17 *le temps de la*
18 *disposition. Le texte*
19 *est également modifié*
20 *afin de préciser que*
21 *le droit de préemption*
22 *existe lorsqu'il*
23 *existe une demande*
24 *concurrente d'un autre*
25 *client admissible,*

1 *qu'il s'agisse d'un*
2 *nouveau client ou d'un*
3 *client existant du*
4 *service de transport.*
5 *Les modifications*
6 *proposées sont utiles*
7 *puisque'elles*
8 *facilitent la*
9 *compréhension et*
10 *l'application de cette*
11 *disposition. »*

12 Now, in paragraph 25 of your report, you
13 suggested that HQT provide explanations
14 for the removal of the word « new ». I
15 concluded from your presentation in chief
16 that you are still not satisfied with
17 these explanations, or are you satisfied?

18 R. No, I'm not satisfied by these because, as
19 the answer states, these are not compliant
20 with 890. There's nothing in Orders 890
21 driving this change. And in fact, the
22 standard Tariff, the *pro forma* Tariff
23 under 890, does not introduce that word
24 « new ».

25 And I think, as I've said before in

1 this proceeding, FERC knows exactly what
2 an eligible customer is, it's a major
3 capitalized term. If they had intended
4 for it to say « new eligible customer »,
5 they would have done it. And they
6 understand how it changes the game. It
7 would allow HQT to challenge other
8 existing customers. It would allow
9 Brookfield to do that.

10 But again, my objection is it's not
11 consistent with 890, it's not in the 890
12 *pro forma*, I don't see any justification
13 for it.

14 Q.119 So, the fact that the word « new » has
15 been removed, in itself, because it's not
16 in the 890 *pro forma*, is the basis for
17 your objection?

18 R. Well, the fact that it has been removed
19 and it has consequences, it would change
20 the game.

21 Q.120 Now, I would like to take a copy of the
22 transcript, volume 20, so I understand
23 your position a bit better. Page 63 of
24 the transcript of April 19th. And again,
25 page 63, it starts at line 5, you have a

1 long answer ending on page 64. And what
2 you say here, and I'll let you read it
3 but... on top of page 64, you say
4 essentially:

5 « *FERC knew what it*
6 *was doing when it put*
7 *that language in.* »

8 Now, aside from the fact that the word has
9 been removed and is not in the *pro forma*,
10 from a policy perspective, what would be
11 wrong in allowing existing clients to
12 challenge transmission rights? Could be
13 Brookfield, could be Hydro-Québec
14 Production, could be any other client.

15 What is wrong, from a policy perspective,
16 in allowing existing clients to challenge
17 and raise these preemption rights? What's
18 wrong about that?

19 R. I think it goes back to again the Régie's
20 order in the complaint case. And it goes
21 back even further to FERC's intent in all
22 of that that I tried to explain. What
23 FERC is trying to do is to say: Once you
24 become a firm transmission customer, you
25 have an ongoing right to that firm

1 service. And so this is just one more
2 variation on that theme. They're saying:
3 You have that right and we're not going to
4 let other existing transmission customers
5 come and challenge you. Now, we'll let
6 this right of first refusal for new
7 eligible customers, but we won't allow it
8 otherwise.

9 Q.121 Where do you find this rationale in FERC
10 Orders 890? Where do you find in FERC
11 890, or previous orders, any basis to what
12 you just said, that it is just and fair to
13 prevent existing customers from raising
14 rights of preemptions and challenging
15 rights of preemptions? Where does it say,
16 where does FERC say that?

17 R. Well, it says that by not including the
18 word « new » as a modifier to eligible
19 customers in its own Tariff, in its own
20 *pro forma* Tariff. So, quote unquote, it
21 says that there.

22 Q.122 So actually it says the opposite because
23 it does not remove the word « new ». The
24 word « new » is in the FERC *pro forma*,
25 right?

1 R. That's not my understanding.

2 Q.123 We are removing the word « new ». You're
3 challenging our...

4 R. No, no, no, I apologize.

5 Q.124 Yes, you're right but just the other way.

6 R. Yes, I apologize. Yes, we want, you know,
7 I apologize for that. FERC did limit it
8 to new eligible customers and HQT wants to
9 take that word out. And I'm saying that
10 the justification for it - and I apologize
11 for getting it backwards - justification
12 is that FERC does want it to be new
13 eligible customers because of this long-
14 standing principle that once you become a
15 firm transmission customer, you are
16 entitled to that, just like you're
17 entitled to a renewal or a rollover.

18 Q.125 But again, this is your interpretation of
19 the word « new ». I'm asking you whether
20 FERC has offered that explanation
21 anywhere, going from Order 888 to the most
22 recent order you can find? Where FERC has
23 said that it is good policy making to
24 prevent existing customers from
25 challenging preemption rights? Where does

1 it say that this is good policy?

2 R. You won't find my words, again, I'm not
3 that famous, they don't use my words, you
4 know. But those are my words, but I think
5 it is well founded in FERC's principles
6 that we've seen in many of the case
7 precedents I've included in my expert
8 report.

9 Q.126 I'm not looking for your exact words, I'm
10 looking for the concept. The concept you
11 describe on page 63, maybe I could read
12 that to you again. So, you quote FERC and
13 you say, line 14:

14 « FERC had intended
15 that they would have
16 used those words,
17 eligible customers an
18 important defined term
19 in the pro forma, so
20 they intended it to
21 mean that if you're an
22 existing customer, you
23 do not have the right
24 to challenge other
25 existing transmission

1 *customers under*
2 *section 2.2. Hydro's*
3 *suggestion is to open*
4 *that and say: New*
5 *customer, old*
6 *customer, all*
7 *customers can*
8 *challenge preemption*
9 *rights.*

10 You're saying: No, no, there's a
11 rationale, FERC did not intend to open
12 this to existing customers.

13 I'm asking you to point me to any
14 passages in any of FERC orders where it
15 says that it's good policy to close that
16 category to new existing customers only as
17 opposed to opening it to new or old
18 customers?

19 R. I would point to the fact that they say
20 new eligible customer. And again, they
21 know what that means, they wouldn't have
22 put it in if they didn't have a reason.
23 I believe it's a long-standing reason
24 which is protection of existing
25 transmission customers, firm transmission

1 customers.

2 Q.127 So, they had a reason but what you're
3 telling me is that you cannot find that
4 reason in their decisions? So, you're
5 assuming that because it's there, it's
6 going to be there forever?

7 R. Well, again, I cannot find those words but
8 I can find that reasoning.

9 Q.128 Where is the reasoning in FERC's Orders?
10 Show me the reasoning?

11 Me PAULE HAMELIN :

12 Monsieur le Président, le témoin a répondu plus
13 d'une fois que le *reasoning* était lié à la notion
14 même de droit ferme. Et il a référé à...

15 Me ÉRIC DUNBERRY :

16 Est-ce la réponse, Maître Hamelin?

17 Me PAULE HAMELIN :

18 Non, non, mais je...

19 Me ÉRIC DUNBERRY :

20 Est-ce que c'est une objection ou c'est la réponse?

21 Me PAULE HAMELIN :

22 C'est une objection, Maître Dunberry, parce que ça
23 fait quatre fois que vous posez la même question.
24 Alors, j'ai le droit d'indiquer que le témoin a déjà
25 répondu à la question.

1 Me ÉRIC DUNBERRY :

2 Monsieur le Président, je pense que le témoin a
3 indiqué que les mots ne se trouvaient pas dans les
4 décisions. Je lui demande est-ce qu'*the rationale*,
5 l'expression française, la raison d'être, de ce mot-
6 là est discutée par FERC dans ses ordonnances.
7 J'essaie de savoir et d'aller lire cette raison
8 d'être, et c'est l'objectif de la question. C'est
9 simplement ça.

10 LE PRÉSIDENT :

11 Un instant.

12 La Régie permet la question.

13 Me ÉRIC DUNBERRY :

14 Q.129 So, Mr. Sinclair...

15 Me PAULE HAMELIN :

16 Roach.

17 Me ÉRIC DUNBERRY :

18 Q.130 Sorry, Mr. Roach, could you refer us to a
19 section, a passage, a paragraph in FERC
20 orders where the reasoning for that word
21 « new » is discussed?

22 R. Again, I don't have those exact words but
23 I would point to all the times that FERC
24 speaks of protecting the rights of
25 existing firm transmission customers such

1 as the rights under section 2.2 for
2 renewal or rollover.

3 11H40

4 Q.131 Last line of questions, Mr. Roach. Page
5 8 of your report, you discuss the notion
6 of exchanging data. Page 8, paragraph 16.
7 You take the position as of September 28,
8 2010 that HQT's action does not appear to
9 have been coordinated with its neighbours
10 on the New England side of the intertie.
11 Is this comment limited... this lack of
12 coordination or exchange of data, I use
13 the expression which is a broader
14 expression, is your comment limited to the
15 HQT-New England intertie or are you
16 alleging that for all interties, as a
17 general statement and a general
18 observation, that HQT's actions were not
19 properly coordinated with its neighbours?
20 I mean through exchanging of information.
21 I think this is what you're referring to.

22 R. I think that it's mostly about this one
23 intertie, but I have reviewed other
24 discussions. And I want to be clear, as
25 I was in my presentation, it's not that

1 HQT doesn't speak with New England, New
2 York, it's not that they don't go to
3 operational meetings and all of that, I
4 don't want to be claiming that. But what
5 I'm not seeing is this data presentation
6 on what's actually happened across that or
7 any other intertie, you know, on the
8 Québec-New England intertie, how often and
9 for how long has the capacity been able to
10 be sustained at 1,500 or 1,400. That's
11 the kind of information interchange that
12 I would like to see. But it's not that
13 they don't talk to them at all, it's just
14 that specific study isn't there.

15 Q.132 As a matter of fact, did you review the
16 testimony of monsieur Clermont on the
17 nature of these exchanges that he had with
18 neighbouring operators? Monsieur Clermont
19 testified on this, was cross-examined by
20 your lawyer.

21 R. Yes.

22 Q.133 Do you recall reviewing his testimony?

23 R. I do. I believe I was actually here for
24 some of it. But yes, I remember that
25 discussion.

1 Q.134 So, could you summarize in a nutshell what
2 you understood from Mr. Clermont's
3 testimony?

4 R. Well, again, what I remember most is what
5 I read in terms of confidential notes so
6 I'll keep it at a high level here. I
7 think that... go ahead.

8 Me PAULE HAMELIN :

9 On s'en va dans le confidentiel ça fait que je veux
10 juste m'assurer que tous les gens qui sont dans la
11 salle ont signé l'entente de confidentialité, ça
12 fait qu'il faut juste peut-être faire attention à ce
13 niveau-là, rester dans le *high level* justement.

14 LE PRÉSIDENT :

15 Évidemment, tout ce qui réfère à ce qui a été traité
16 sous pli confidentiel ou...

17 Me ÉRIC DUNBERRY :

18 Tout à fait.

19 LE PRÉSIDENT :

20 ... dans le cadre d'une audience à huis clos, il ne
21 faudrait pas dévoiler...

22 Me ÉRIC DUNBERRY :

23 Non, tout à fait.

24 LE PRÉSIDENT :

25 Il y a internet qui est ouvert donc il faut s'en

1 tenir à ce qui n'est pas confidentiel.

2 Me PAULE HAMELIN :

3 Ou les documents qu'il a lui-même regardés dans le
4 cadre de ses vérifications à la Régie.

5 Me ÉRIC DUNBERRY :

6 J'ai quelques questions préliminaires, Monsieur le
7 Juge.

8 Q.135 Mr. Roach, you understood the discussion
9 we were just having right now, it's about
10 the confidentiality of the information, or
11 some of the information, that was
12 disclosed in this hearing.

13 R. I do.

14 Q.136 So, I will ask you a couple of questions,
15 but please do not refer to the contents of
16 these exchanges.

17 My first question was that monsieur
18 Clermont was in fact cross-examined by
19 Brookfield's counsel on February 11, 2011
20 about these exchanges that took place
21 between neighbouring systems and I see
22 here that you were not in attendance
23 during that cross-examination, is that
24 correct?

25 R. I think that's right. And can I just ask,

1 that was a confidential proceeding?
2 Q.137 It was a confidential proceeding.
3 R. Yes, okay. Yes, I was not here.
4 Q.138 You were not here. Did you sign a
5 confidentiality agreement?
6 R. Yes.
7 Q.139 Yes, you did. Now, were you provided with
8 a translation of the transcript that was
9 taken during these sessions?
10 R. Only orally.
11 Q.140 What do you mean orally?
12 R. Just we discussed what was discussed in
13 that confidential session.
14 Q.141 So, you and your lawyer had a general
15 discussion on the contents of monsieur
16 Clermont's testimony? You got a verbal
17 summary of monsieur Clermont's deposition
18 from your lawyer?
19 R. From the client lawyer, yes.
20 Q.142 And today you're relying on that summary
21 to declare that you did not find in the
22 evidence what you were expecting in terms
23 of nature or extent of the information
24 exchanged?
25 R. No, I'm relying on what I actually

1 reviewed on two occasions here at the
2 Régie. And then that particular
3 discussion did not change my view which I
4 had formed.

5 Q.143 So, the content of that deposition
6 summarized to you did not change your
7 deposition?

8 R. Did not change my view of what discussions
9 were being had.

10 Q.144 And I guess you're referring to the
11 documents that were produced under a seal
12 of confidentiality, these are HQT-41,
13 document 1.1, and HQT-41, document 1.2,
14 referring to minutes of meetings held with
15 ISO New England and ISO New York, is that
16 correct?

17 R. That's my recollection, I don't have those
18 numbers necessarily, but yes, that's my
19 recollection.

20 Q.145 So, you reviewed these two documents.
21 What else did you review to satisfy
22 yourself that your conclusions before this
23 Régie are founded, aside from these two
24 documents?

25 R. Well, I think it was more than two

1 documents, I was here on two occasions,
2 but I think that review of those
3 confidential documents are the basis for
4 my conclusion. Also the fact that I
5 didn't see in the public record
6 discussions of coordinating among the
7 parties.

8 Me ÉRIC DUNBERRY :

9 Monsieur le Président, avec votre permission, je
10 vais prendre une petite minute pour voir si j'ai
11 fait le tour de la question.

12 Monsieur le Président, quant à moi, ce
13 sera tout pour le contre-interrogatoire de monsieur
14 Roach. Ma consœur pourra débiter, comme vous
15 voulez, prendre la pause, c'est à votre discrétion.

16 LE PRÉSIDENT :

17 Je crois que nous allons prendre la pause *lunch* et
18 reprendre à 13 h 00.

19 SUSPENSION DE L'AUDIENCE

20 13H04

21 REPRISE DE L'AUDIENCE

22 LA GREFFIÈRE :

23 Veuillez prendre place, s'il vous plaît.

24 LE PRÉSIDENT :

25 Alors, nous reprenons l'audience. Maître Hivon.

1 CONTRE-INTERROGÉS PAR Me MARIE-CHRISTINE HIVON :

2 Merci, Monsieur le Président. Bonjour à tous.

3 Q.146 Mr. Roach, good afternoon.

4 R. Good afternoon.

5 Q.147 Mr. Roach, I will ask you to take the
6 answers to the Request for Information to
7 Hydro-Québec' Request for information,
8 it's Exhibit C-6-61, at question 6.1.

9 Me PAULE HAMELIN :

10 Un cartable sur les demandes de renseignements que
11 vous devez avoir là.

12 Me MARIE-CHRISTINE HIVON :

13 C-6-61 c'est la réponse d'EBMI à la demande de
14 renseignements numéro 1 du Transporteur.

15 LE PRÉSIDENT :

16 Est-ce que vous avez juste la date de la pièce?

17 Me MARIE-CHRISTINE HIVON :

18 Du 13 octobre 2010.

19 LE PRÉSIDENT :

20 2010.

21 Me MARIE-CHRISTINE HIVON :

22 À la page 10 de 11.

23 Q.148 So you have the document in front of you?

24 R. I do.

25 Q.149 Okay. The question was addressed to you

1 and I'm reading your translation of the
2 question which was:

3 « Have your services
4 already been retained
5 with regard to the
6 transmission
7 installations planning
8 process set out in
9 Attachment K of the
10 FERC pro forma OATT? »

11 And your answer to the question was:

12 « I have not testified
13 in formal cases
14 relating to FERC's
15 Order 890 transmission
16 planning requirements.
17 However, I was
18 retained by the
19 Southwest Power Pool
20 Board of Directors to
21 opine on various
22 aspects of SPP's
23 transmission planning
24 process. »

25 So, Mr. Roach, I understand that this is

1 the first time you testify on the Appendix
2 K contained at the *pro forma* 890 of the
3 FERC Order 890?

4 R. That's correct.

5 Q.150 And that you have been retained by
6 Southwest Power Pool to opine on specific
7 aspects of SPP's transmission process?

8 R. Yes, the actual application of the
9 planning process.

10 Q.151 And the question 6.3:

11 « *If written reports*
12 *or depositions were*
13 *provided or filed,*
14 *provide a copy*
15 *thereof. »*

16 And you refer to Attachment 5 which is one
17 document, which is a PowerPoint
18 presentation. I'm showing you the
19 document, *Independent Review of SPP'S*
20 *Cost/Benefit Study for the Priority*
21 *Transmission Project.* This is the only
22 document filed in support of this
23 experience in your answer to the Request
24 for Information?

25 R. Yes, that's correct. We advisors, the

1 Board was considering about a billion,
2 \$1.1 billion in new transmission projects
3 and it had come up through a stakeholder
4 process and they asked us to opine on both
5 the substance and the methods, the study
6 methods for that \$1.1 billion.

7 Q.152 Okay. I would like here, Mr. Roach, to
8 open a parenthesis with respect to
9 Southwest Power Pool just so that we know
10 what we are referring to.

11 When I read your resumé, I understand
12 that you have performed a few mandates for
13 them including their state of the market
14 reports?

15 R. Correct.

16 Q.153 I would like to confirm a certain number
17 of facts with respect to Southwest Power
18 Pool. And I would like to refer you to a
19 document called *2009 Annual Report of*
20 *Southwest Power Pool*. We will provide you
21 with an extract of that document. And I
22 have copies for the Régie.

23 So, you agree with me, Mr. Roach,
24 that SPP is a regional transmission
25 organization or RTO?

- 1 R. Correct.
- 2 Q.154 And that SPP is part of the Eastern
3 Interconnection?
- 4 R. Correct.
- 5 Q.155 And it's synchronized with the rest of the
6 Eastern Interconnection?
- 7 R. Correct.
- 8 Q.156 And if we look at the document, the
9 extract I handed to you, when we look at
10 the second page 2009, the numbers, we see
11 the first line, it confirms that it is, in
12 fact a regional transmission organization.
- 13 And if we go at the second arrow, we
14 see that there are 56 members in nine
15 states, including Arkansas, Kansas,
16 Louisiana, Mississippi, Missouri,
17 Nebraska, New Mexico, Oklahoma and Texas
18 and that there are over 15 million people
19 in the SPP region. You see that?
- 20 R. Yes.
- 21 Q.157 Do you agree with these numbers? Is it to
22 your knowledge?
- 23 R. Yes. I have no reason to disagree.
- 24 Q.158 Okay. And if we continue on the fourth
25 arrow we see:

1 « 29 *balancing*
2 *authorities.* »
3 You also see that?
4 R. Yes.
5 Q.159 And if we continue down on this document
6 we see:
7 « *Market size: 33*
8 *participants in*
9 *wholesale energy*
10 *market.* »
11 You see that as well:
12 « *Market size: 33*
13 *participants in*
14 *wholesale energy*
15 *market.* »
16 R. Yes.
17 Q.160 Okay. And is it to your knowledge that
18 there would be and it's not on this
19 document, I have another document if it's
20 necessary, do you know the number of
21 transmission customers at SPP?
22 R. I don't.
23 Q.161 Okay. Do you have a ballpark figure of
24 the number of transmission customers?
25 R. I don't. They are probably in the order

1 of 20 to 30 market participants who
2 participate in the spot energy market, but
3 I'm not sure off the top of my head how
4 many transmission customers there are.

5 Q.162 Okay. I will give to you a list of the
6 members that we can find on SPP's website
7 which confirms that there would be a total
8 of 113 transmission customers. Would that
9 appear to be fair for you?

10 R. If the document says it, that's fine with
11 me.

12 Q.163 Okay. So, you have the list in front of
13 you, Mr. Roach. If I suggest to you that
14 if we add these entities, these customers,
15 it totals 113 transmission customers.

16 R. Sure, I'll take it subject to check, sure.

17 Q.164 Okay. And with respect to the
18 transmission, number of transmission
19 owners in SPP, would you know how many
20 there are?

21 R. Yes, not off the top of my head.

22 Q.165 No. If I suggest to you that if we take
23 a NERC list of SPP's registered entities,
24 that there would be 38 transmission owners
25 registered with NERC with respect to SPP,

1 would that seem reasonable for you?

2 R. Sure, I'll take it subject to check, sure.

3 Q.166 Subject to check, okay. So, we will
4 provide you with a copy of that document
5 as well which is a matrix from NERC and,
6 if we combine all the entities listed for
7 the region of SPP, we obtain these
8 figures.

9 And if you look at the column
10 identified as TO, do you agree that we
11 refer to the transmission owner, Mr.
12 Roach?

13 There are many columns. If you take
14 the FERC column from the right-hand side
15 of the document, you have all the TOs
16 registered with NERC for the region of
17 SPP?

18 R. Sure, again. I'm happy to take it,
19 subject to check.

20 Q.167 Okay. So, I invite you to count the
21 number of TOs and I suggest to you that we
22 arrive at the total of 38?

23 I would like to file these documents,
24 en liasse. Nous sommes rendus à la cote
25 B-231. Il s'agit de trois documents

1 relatifs à Southwest Power Pool.

2 PIÈCE B-231 :

3 (en liasse) Trois documents relatifs à Southwest
4 Power Pool.

5 Me PAULE HAMELIN :

6 Monsieur le Président, on va faire les vérifications
7 dont l'expert vient de parler en fonction des
8 documents que l'on a eus et on verra à communiquer
9 avec ma collègue si on a besoin de certaines
10 informations sur naturellement où ont été pris
11 l'ensemble de ces documents. Là, je vois qu'on a
12 des références à NERC puis directement au site
13 internet de SPP, mais on fera les vérifications et
14 on vous reviendra là-dessus.

15 Me MARIE-CHRISTINE HIVON :

16 Je n'ai pas de problème, Monsieur le Président, si
17 le témoin souhaite comptabiliser les chiffres qu'on
18 lui a suggérés.

19 Me PAULE HAMELIN :

20 En fait, c'est aussi de vérifier la provenance des
21 documents et tout ça alors merci.

22 Me MARIE-CHRISTINE HIVON :

23 Q.168 Is it to your knowledge that SPP... is it
24 to your knowledge, Mr. Roach, that SPP
25 encounters congestion problems causing

1 locational price divergence?

2 R. Yes.

3 Q.169 Do you agree... Mr. Roach, my first
4 question will be, have you had the
5 occasion to read or listen to the
6 testimony of Mr. Robert Sinclair of last
7 week?

8 R. I've reviewed some of the transcripts.

9 Q.170 With regard to transmission planning?

10 R. Yes.

11 Q.171 Okay. So, I will ask you a series of
12 questions. Some of them may be a
13 repetition of what you already read, but
14 it's important for us to have a common
15 understanding of your approach since
16 you're another expert testifying in this
17 case.

18 Mr. Roach, do you agree that there is
19 only one major transmission system in
20 Québec?

21 R. That sounds right, yes.

22 Q.172 And that there is only one major
23 transmission provider being TransÉnergie?
24 To your knowledge, Mr. Roach?

25 R. Clearly, HQT is the primary system. There

1 are a couple of sub-systems. I was
2 discussing it with Mr. Marshall. But your
3 question is what's the primary system?
4 Certainly HQT.

5 Q.173 My question was whether there was only one
6 major transmission provider?

7 R. Yes, I can... putting in the word
8 « major », I certainly agree with that.

9 Q.174 And you refer to others. Mr. Roach, to
10 your knowledge, what are you referring to
11 specifically? And I will ask the same
12 question to Mr. Marshall later on so I
13 would like to have, Mr. Roach, your
14 understanding, personal understanding of
15 these basic facts.

16 R. Well, I would just be saying the same
17 thing he's going to say and we're a panel,
18 so go ahead.

19 Q.175 No, I would like...

20 Monsieur le Président, je pense que nous posons des
21 questions de base de ce qui se passe sur le réseau
22 de TransÉnergie à monsieur Roach qui a déposé un
23 rapport personnel, un rapport d'expert qu'il a lui-
24 même écrit dans la présente cause.

25 Je comprends qu'EBMI a deux experts qui

1 traitent de cette question-là mais justement nous
2 avons deux rapports distincts et, là, je pose des
3 questions de base à monsieur Roach justement pour
4 connaître sa connaissance de ces faits-là. Je pense
5 que les questions viendront à monsieur Marshall. Je
6 ne veux pas être répétitive ici mais c'est le nombre
7 de témoins experts qui sont présentés par les
8 intervenants qui nous obligent à faire cet exercice-
9 là, mais je pense qu'on peut s'attendre à une
10 réponse de monsieur Roach qui n'est pas en
11 consultation avec monsieur Marshall sur ces
12 questions de connaissances de base.

13 Et je comprends que... je constate que les
14 experts Marshall et Roach s'échangent des
15 informations écrites ou verbales alors, évidemment,
16 ce sera une question de crédibilité au bout du
17 compte, mais je pense que c'est important que
18 monsieur Roach puisse répondre à ces questions de
19 base.

20 LE PRÉSIDENT :

21 Alors, la Régie va permettre les questions adressées
22 à monsieur Roach.

23 13H20

24 Me MARIE-CHRISTINE HIVON

25 Q.176 So, you were referring, Mr. Roach, to, in

1 your answer that you gave to me, to the
2 fact that you would agree that there is
3 one major transmission provider being
4 TransÉnergie but that there were other
5 minor... what were you referring to with
6 the nuance you made in your answer?

7 R. Again, my goal is to make sure the Régie
8 has accurate information and I thought I
9 was being forthcoming. You make it a big
10 deal of credibility. I was just being
11 forthcoming because Mr. Marshall has some
12 solid knowledge and he told me that the
13 answer is right except there are a couple
14 of subsystems, Alcan and La Lièvre. So,
15 I was just trying to be accurate for the
16 Régie.

17 Q.177 But this is not to your personal
18 knowledge, you are referring to the
19 information...

20 R. It is now, it's on this Post-it.

21 Q.178 Yes, that Mr. Marshall gave to you, okay.
22 So, for you, there is one major
23 transmission provider?

24 R. I think for everyone, Ma'am.

25 Q.179 Thank you, that was my question.

1 TransÉnergie's system is one of the four
2 Interconnections with a capital « I » in
3 North America, would you agree with that?

4 R. I would say it's a large interconnection,
5 yes.

6 Q.180 But that TransÉnergie's system is one of
7 the four big interconnections, like
8 with... if we compare with ERCOT, Western
9 Interconnection, Eastern Interconnection
10 and there is the interconnection of
11 Québec, you agree with that?

12 R. Yes, that's...

13 M. WILLIAM MARSHALL :

14 R. But it's more than that.

15 Me MARIE-CHRISTINE HIVON :

16 Q.181 And you also agree that...

17 R. But I'm just going to add a comment to
18 that.

19 Q.182 Mr. Marshall, I will have the same
20 questions for you probably tomorrow. So,
21 if we can continue with the cross-
22 examination of Mr. Roach, I would
23 appreciate. Thank you.

24 Me PAULE HAMELIN :

25 Peut-être demander à monsieur Marshall qu'il prenne

1 en note ce qu'il voudra rajouter et il fera les
2 commentaires lors du contre-interrogatoire ou
3 réinterrogatoire.

4 LE PRÉSIDENT :

5 Alors, la Régie va permettre de continuer et la
6 Régie permet que l'interrogatoire soit adressé à
7 monsieur Roach en tant que témoin expert, et par la
8 suite, Monsieur Marshall, vous serez également
9 interrogé. Donc, pour l'instant, la Régie permet
10 que monsieur Roach réponde aux questions qui lui
11 sont posées.

12 Me MARIE-CHRISTINE HIVON :

13 Merci.

14 Q.183 So, Mr. Roach, coming back to you, do you
15 agree that TransÉnergie's system is not
16 synchronized and is isolated from New
17 Brunswick, Ontario and the United States?

18 M. CRAIG ROACH :

19 R. My understanding, it's not synchronized.

20 Q.184 And would you agree that having this
21 Québec Interconnection not synchronized
22 with its neighbouring systems is a unique
23 situation if we compare it to the other
24 big interconnections in North America?

25 R. I mean I think that Texas Interconnection

1 prides itself on being separate from the
2 others; so I wouldn't say it's unique.

3 Q.185 So, you would compare it to ERCOT
4 Interconnection, is that what you are
5 referring to?

6 R. Well, your question is that it's not
7 synchronized and I think ERCOT tries to be
8 independent. For example, SPP has DC
9 lines into ERCOT. So, they try to be
10 independent so that they're not... they
11 don't come under FERC jurisdiction.

12 Q.186 And having only one major transmission
13 provider, one major transmission owner and
14 one single interconnection, would that be
15 unique for you even compared with ERCOT?

16 R. Again, I don't... you're talking about
17 interconnections. I don't think that's
18 correct in the sense the Eastern
19 Interconnection, for example, is huge but
20 a huge portion of that has PJM at its
21 single transmission provider. So, I'm not
22 sure that looking at it by interconnection
23 by interconnection gives the Régie the
24 correct view of whether there are other
25 large areas served by a single

1 transmission provider.

2 Q.187 And PJM is synchronized with the rest of
3 the Eastern Interconnection, we agree on
4 that?

5 R. Yes.

6 Q.188 And when you talk about Texas, you refer
7 to ERCOT?

8 R. Correct.

9 Q.189 And you believe that... is it your
10 testimony that ERCOT is comparable to the
11 interconnection of Québec?

12 R. No, you asked me a question, you asked me
13 whether Québec is unique in the sense of
14 being a large area which is not, you know,
15 not interconnected on purpose, not
16 synchronized with other parts of North
17 America. And I'm saying it's not unique.
18 I think Texas attempts to be unique, you
19 know, isolated from the rest of the United
20 States.

21 Q.190 And if we are not limiting ourselves to
22 the fact that the interconnection is not
23 synchronized with other interconnections,
24 but with respect to the fact that there is
25 only one major transmission owner, one

1 major transmission provider, would that
2 differentiate with respect to ERCOT?

3 R. No, I believe that that ISO is the
4 transmission provider. And again, you're
5 dividing the world up into
6 interconnections. If the question is are
7 there large areas where there is a single
8 large transmission provider, there are a
9 lot of them and PJM, Midwest ISO, SPP is
10 substantial. I don't see the distinction
11 of synchronization or non-synchronization
12 as driving that answer.

13 Q.191 As I mentioned, Mr. Roach, I refer to the
14 fact that it is not synchronized with
15 other neighbouring systems, but also the
16 other characteristics that you just
17 confirmed with respect to this specific
18 interconnection. So, for you, it would be
19 comparable to PJM or to ERCOT?

20 R. In terms of... again, you're making the
21 distinction on synchronization or not, I
22 don't think that... it certainly doesn't
23 drive me in my decision on Attachment K
24 nor does it drive FERC. But if you're
25 asking me about other large areas that

1 have a large single transmission provider,
2 that's what RTOs and ISOs do. So, there
3 are several of those.

4 Q.192 So, we won't agree on that today, but I
5 would like to again open a parenthesis
6 with regard to Texas and ERCOT
7 interconnection so that we have the facts
8 right and then we would draw our own
9 conclusions on these facts. I would like
10 to refer you to the Electric Liability
11 Council of Texas 2008 Annual Report, a
12 copy of which will be given to you. And
13 we can already file it as exhibit B-232.

14 PIÈCE B-232 :

15 Electric Liability Council of Texas 2008 Annual
16 Report.

17 Me MARIE-CHRISTINE HIVON :

18 Q.193 Have you seen this document before, Mr.
19 Roach?

20 R. I may have in other proceedings but I
21 don't recall it off the top of my head.

22 Q.194 So, we all agree that Texas is located in
23 the United States?

24 R. Yes.

25 Q.195 I invite you to take the first page

1 entitled « *ERCOT Quick Facts* ». So, at a
2 glance, we see in the first half of this
3 page, Market Participants. So, it's maybe
4 the tenth line from the top of the page:

5 « *Market participants:*
6 *828 active entities*
7 *that generate, move,*
8 *buy, sell or use*
9 *electricity at*
10 *wholesale levels. »*

11 Do you see that?

12 R. I do.

13 Q.196 Do you agree with this figure?

14 R. I have no reason to disagree.

15 Q.197 If we go to page 16 of this document, we
16 have a list of ERCOT members. And we see,
17 first, we have the consumers, then we have
18 cooperatives, independent generators - I'm
19 just looking at the big categories here,
20 Mr. Roach - independent power marketers,
21 independent retail electric providers,
22 investor-owned utilities and municipals.
23 Are these informations to your knowledge,
24 Mr. Roach?

25 R. I'm with you.

1 Q.198 Excuse me?

2 R. I'm with you.

3 Q.199 Are these informations to your knowledge?
4 When you referred to Texas previously in
5 your testimony, did you have knowledge of
6 these members of the ERCOT
7 Interconnection?

8 R. I knew there were a lot of members, we've
9 look at it before in other proceedings.
10 I have no reason to doubt this list.

11 Q.200 Is it also to your knowledge, and I refer
12 you to page 9 of this document under the
13 heading « *Board acts quickly to address*
14 *congestion issues* » that ERCOT is
15 suffering from congestion problems.

16 Me PAULE HAMELIN :

17 Monsieur le Président, on tire une conclusion.
18 Naturellement, on parle d'un rapport de 2008 alors
19 juste remettre ça dans le contexte. Peut-être
20 qu'ici, en 2008, juste dire que ce n'est peut-être
21 pas la dernière information à jour, juste préciser
22 ça. Alors, on fera les vérifications. Je sais que
23 ma consœur l'a déjà produit mais, avec la même
24 réserve que j'ai faite tantôt, on fera les
25 vérifications additionnelles.

1 Me MARIE-CHRISTINE HIVON :

2 Q.201 So, I am at page 9, Mr. Roach. We see
3 under « *Board acts quickly to address*
4 *congestion issues* ». My first question
5 was whether you knew that ERCOT or you
6 know that ERCOT is suffering from
7 congestion problems?

8 R. Yes, just as it says, there's been a
9 record of congestion among the four
10 congestion zones. They're moving to
11 locational and nodal market because
12 there's congestion within these zones
13 also. So, it's understood.

14 Q.202 You agree, Mr. Roach, or is it to your
15 knowledge that there is no RTO or ISO in
16 Québec, in the Québec Interconnection?

17 R. That's my understanding.

18 Q.203 Is it to your knowledge that the Régie de
19 l'Énergie is the only regulator having
20 jurisdiction over TransÉnergie aside from
21 a limited jurisdiction of the National
22 Energy Board?

23 R. That sounds right to me.

24 Q.204 And that it is to the Régie to adopt
25 Tariffs and Conditions that are just and

- 1 reasonable?
- 2 R. I didn't catch the first... you're saying
- 3 that the Régie would adopt Tariffs and
- 4 Conditions that are just and reasonable?
- 5 Q.205 Is it to your knowledge that it is to the
- 6 Régie to adopt Tariffs and Conditions, it
- 7 is the Régie's responsibility or mandate
- 8 to adopt Tariffs and Conditions that are
- 9 just and reasonable?
- 10 R. That would be my understanding.
- 11 Q.206 And is it also to your knowledge that the
- 12 Régie is not subject to FERC's
- 13 jurisdiction in doing so?
- 14 R. That's correct, except through
- 15 reciprocity, FERC would have no influence
- 16 on how business is done here. But it's
- 17 through reciprocity that it does.
- 18 Q.207 Through reciprocity, I'm sorry, I didn't
- 19 hear the end of your answer?
- 20 R. I said that clearly FERC has no
- 21 jurisdiction here and the Régie has
- 22 jurisdiction, but FERC's influence on how
- 23 things are done is expressed or achieved
- 24 through reciprocity.
- 25 Q.208 We'll come to this issue in a few minutes.

1 And do you also agree that the Régie is
2 not directly bound by FERC's decisions and
3 orders?

4 R. I agree with that. But as the Régie said
5 in its order in a complaint case, the *pro*
6 *forma* here looks so much like the FERC *pro*
7 *forma*, the Tariff looks so much like that,
8 that it's at least interesting reading for
9 you, if not somewhat instructive, to see
10 how FERC thinks about these issues.

11 Q.209 Do you also agree that in the exercise of
12 its discretion, that the Régie has the
13 power to adapt TransÉnergie's Tariff to
14 the specific context in which TransÉnergie
15 operates?

16 R. I would agree with that. Again, the only
17 constraint is reciprocity.

18 Q.210 And are you of the view that the Régie has
19 the jurisdiction to adopt a Tariff that is
20 not necessarily a line-by-line
21 reproduction of the *pro forma* OATT from
22 FERC?

23 13H35

24 R. I agree with that. I think that subject
25 to reciprocity, they can make changes.

1 And also subject to the fact that the
2 tariff could go before FERC and the Régie
3 or HQT could say that here we did this
4 different from the *pro forma*, but it's
5 consistent with and maybe even better than
6 you have in the *pro forma* and FERC would
7 entertain that argument. And that's the
8 way the HQT should have handled Schedule
9 K rather than not providing it. They
10 should have provided a document showing
11 that... their belief that it's
12 substantially conform.

13 Q.211 Just to make sure I heard you right, you
14 said that HQT could go before FERC to
15 discuss the differences in its tariff
16 compared with the *pro forma* OATT, is that
17 HQT TransÉnergie you mentioned?

18 R. I'm saying that, yes, that's one way to do
19 it. I'm just saying that we're on
20 Attachment K, the planning process. HQT
21 didn't even file an Attachment K and what
22 I'm saying is that the proper way to have
23 gone forward would have been for HQT to
24 have prepared an Attachment K showing how
25 its process, if it wants to do this as Mr.

1 Roach suggests, that its process lives up
2 to the nine principles stated by FERC and
3 that it's conforming or substantially
4 better or somewhat better.

5 Q.212 Okay. If I come back to the more general
6 question I asked you, that the Régie has
7 jurisdiction to adopt an OATT that is not
8 a line-by-line reproduction of the *pro*
9 *forma* OATT, your answer would be yes, it
10 has this jurisdiction?

11 R. The answer is it would have... the answer
12 is exactly what I said. The answer is
13 yes, it would have that ability to do it.
14 No one is trying to intrude on the Régie,
15 but it's subject to the reciprocity
16 requirements and there is a better way to
17 make that point.

18 Q.213 And do you agree that an adaptation that
19 the Régie would find just and reasonable
20 and applicable, this adaptation would not
21 be in and of itself a breach of the
22 reciprocity condition?

23 R. No, I don't think there is a pre-judgement
24 on it. I think that if a complaint came
25 up, that HQT or HQT's affiliates would

1 have a chance. Once again, FERC makes it
2 clear that they're willing to accept
3 changes from the *pro forma* if it's
4 consistent or better than what's in the
5 *pro forma*. And that's something they
6 apply in the United States too.

7 Q.214 For public utilities you refer to?

8 R. I apologize, I'm sorry.

9 Q.215 With respect to public utilities in the
10 U.S.?

11 R. It applies to both public utilities and
12 non-public utilities like HQT and its
13 affiliates.

14 Q.216 We'll come to this specific issue in a few
15 minutes, as I mentioned.

16 Besides your mandate for Brookfield
17 in the complaint file and this present
18 mandate, have you had the occasion to
19 review TransÉnergie's current OATT?

20 R. I have, but I'm not sure I heard your
21 question. My review of the Tariff was
22 primarily through these two cases, the
23 complaint case in this case.

24 Q.217 Have you reviewed the whole OATT or only
25 parts of it?

1 R. Probably parts. It's a large document.

2 Q.218 Do you agree that there are currently
3 differences between TransÉnergie's OATT
4 and the pre-Order 890 *pro forma* from FERC?

5 R. You know, I couldn't tell you what they
6 are. I mean, we discussed this morning
7 the removal of that word "new". That
8 would be something in the proposed, but I
9 didn't go through it looking for
10 differences at this point.

11 Q.219 And I'm talking about the current OATT,
12 not the one... not the modifications that
13 are proposed by TransÉnergie, but the
14 current applicable as of today Tariff.

15 R. Yes, again, I didn't go through it looking
16 for differences.

17 Q.220 Is it to your knowledge that it currently
18 contains a Part IV for the supply of
19 native load?

20 R. I understand that, but I have not reviewed
21 that.

22 Q.221 Okay. So, you have not looked at this
23 whole part with all of these sections with
24 respect to the supply of native load in
25 Québec and the particularities of it?

1 R. No, I haven't. I was focused on the issue
2 that we're discussing at Attachment K.

3 Q.222 But is it to your knowledge that the
4 current OATT has been approved by the
5 Régie de l'Énergie before it was...

6 R. That would be my understanding.

7 Q.223 Okay. I will now refer you to your
8 report, Mr. Roach. I understand you have
9 a copy of your report. I've read the
10 response to some of the undertakings that
11 were asked by maître Dunberry a couple of
12 weeks ago.

13 I understand that you have received
14 a copy of Exhibits HQT-15 to HQT-27 before
15 preparing this report? I think it's
16 answer to Undertaking number 11.

17 R. Yes. I have that in front of me and
18 you're saying your numbers were HQT-15
19 to...

20 Q.224 15 to 27.

21 R. Correct. That's what this says. Yes.

22 Q.225 And I have a question with regard to HQT-
23 21 which is, I believe, the only document
24 that has not been translated or that there
25 was no English version of it. Have you

1 received a translation of that document
2 which corresponds to the Guide de dépôt or
3 Filing Guidelines before the Régie de
4 l'Énergie?

5 I see here that in your answer we see
6 HQT-21, document 1, which is a French
7 document. Maybe we can have a look at it
8 and you tell us if you have read that
9 before?

10 R. Well, if it's in French, I'm not going to
11 be able to tell you.

12 Q.226 Okay. So, if I tell you that there exist
13 Filing Guidelines with respect to
14 processes before the Régie de l'Énergie
15 relating to the approval of capital
16 projects or rate cases with specific rules
17 on what must be filed with the Régie from
18 the transmission provider, does that
19 refresh your memory on something you would
20 have read?

21 R. Yes, I've reviewed. When Mr. Rose said
22 that he thought the planning process was
23 consistent or better than the *pro forma*,
24 he referred to several documents in a data
25 request.

1 I recall reading some things about
2 filings and he consistently pointed to
3 litigation which I don't consider it to be
4 what FERC is looking for under K. So,
5 that's the context in which I recall. I
6 can get you an answer on 21. If it's in
7 French, then maybe someone sat with me and
8 explained it or maybe not. We can take
9 that as follow-up undertaking and check
10 it.

11 Q.227 Well, if it's possible, Mr. Roach, because
12 my question was very simple, whether you
13 have reviewed or not HQT-21 and because I
14 understand from the answer you gave in
15 your undertakings that no translations
16 were provided to you on this document.
17 So, if it's possible to verify and come
18 back with this additional detail.

19 R. Yes.

20 Q.228 Maybe maître Hamelin has the answer.

21 Me PAULE HAMELIN :

22 On peut faire la vérification additionnelle, mais je
23 me souviens également qu'on a référé à certaines
24 décisions en matière d'investissements qui je pense
25 réfèrent au guide, mais on fera la vérification

1 supplémentaire, Monsieur le Président, et on donnera
2 la réponse.

3 LE PRÉSIDENT :

4 Très bien.

5 ENGAGEMENT #15 :

6 Verify if Mr. Roach reviewed Exhibit HQT-21.

7 Me MARIE-CHRISTINE HIVON :

8 Q.229 I would like to refer you, Mr. Roach, to
9 page 42 of your report, paragraph 82. And
10 this is the first page on the section of
11 your report dealing with the transmission
12 planning process.

13 At paragraph 82, you mention:

14 « By way of
15 background, in its
16 most recent Orders
17 reforming its
18 requirements for open
19 access transmission
20 tariffs or OATTs, the
21 FERC substantially
22 deepened the
23 requirements for
24 transmission
25 planning. »

1 And there is a footnote 41 referring to
2 FERC Orders 890, 890-A, B, C and D.

3 My first question, and it may sound
4 like details, but is there in FERC Order
5 890-C and D any references to transmission
6 planning process and open planning?

7 R. Yes, I don't recall off the top of my
8 hand. We put this in just to say that
9 there was this long process and some
10 revisiting of issues.

11 What we actually cite too later gives
12 you details of where we went.

13 Q.230 But do you agree with me that Order 890-C,
14 is it to your knowledge that it relates
15 only to consistency and transparency of
16 ATC calculations and designation of
17 network resources?

18 R. You know again, these are big documents.
19 We reviewed them for our British Columbia
20 case. We reviewed them for this case.
21 If you want me to go back and check to do
22 some checking if those refer to planning,
23 I'm happy to do that, but I'm not going to
24 recall that off the top of my head.

25 Q.231 Okay. So, you don't know as of today if

1 the issue of open, transparent and
2 coordinated transmission planning, which
3 is the subject of this section of your
4 report, is dealt with by FERC in these two
5 additional Orders 890-C and 890-D?

6 R. Yes, we just put this down as a reference.
7 If it's important to you, it's not
8 important to me.

9 Q.232 It's not important to you.

10 R. If it's important to you.

11 Q.233 Okay. So I understand that you would have
12 to go back and check in the Orders, but
13 you don't know, now that you are answering
14 my question, you don't know whether it's
15 a subject dealt within these two Orders?

16 R. Again, no, I wouldn't know that. What I
17 relied on is quoted fairly extensively
18 here. So, that's what I'm... you know,
19 that's what I got and relied upon.

20 Q.234 Okay. I refer you to paragraph 84 of your
21 report where you mention:

22 « Mr. Rose is correct
23 in the literal sense
24 that HQT is not
25 required to file an

1 *Attachment K or any*
2 *other part of an OATT*
3 *with FERC since the*
4 *FERC has no*
5 *jurisdiction over*
6 *HQT. »*

7 So, we agree on that, Mr. Roach?

8 R. I agree with my statement, yes.

9 Q.235 And at paragraph 85, and this is where we
10 understand the subject of your report, you
11 mention:

12 *« Mr. Rose appears to*
13 *make three arguments*
14 *for his claim that HQT*
15 *need not provide an*
16 *Attachment K. The*
17 *first is that*
18 *Attachment K is not*
19 *required under*
20 *reciprocity. »*

21 And it goes on with the three arguments.
22 Am I to understand that this whole Section
23 3 of your report responds to the three
24 arguments proposed by Mr. Rose?

25 R. That's what it's meant to do, that's HQT's

1 case. So, we were focused on rebutting
2 it.

3 Q.236 Okay. We will go to the first argument
4 which starts at paragraph 91 of your
5 report. And I will, more particularly,
6 refer you to paragraph 92. And you quote
7 Mr. Rose in paragraph 92 and say... you
8 quote Mr. Rose who says:

9 « It is my
10 understanding that
11 transmission planning
12 with Attachment K is
13 not part of the
14 reciprocity
15 requirements for non-
16 jurisdiction utilities
17 not owning
18 transmission assets in
19 the U.S. »

20 And then, you mention in this paragraph
21 92:

22 « Mr. Rose offers no
23 specific citations to
24 any FERC Orders or any
25 other FERC documents

1 *which states that*
2 *Attachment K is not*
3 *part of the*
4 *reciprocity*
5 *requirements for*
6 *utilities like HQT. »*

7 When asked what he relied on to come to
8 that understanding, Mr. Rose stated, and
9 here you have a reference. You see that,
10 Mr. Roach?

11 R. Yes, it begins with « *It's my opinion* »,
12 yes.

13 Q.237 Yes. I would like to refer you to this
14 specific response from Mr. Rose in HQT, I
15 believe it's HQT-29, document 5.2 at page
16 3.

17 13H51

18 R. Thank you.

19 Q.238 It's response 1. So, Mr. Rose's answer is
20 longer than the extract you refer in your
21 report at paragraph 92. So, when we see
22 in the extracts you quote that there is a
23 capital « I » with « *It is my opinion* »,
24 it's in the middle of the answer given by
25 Mr. Rose when you look at the complete

1 answer. Do you agree with me on that? It
2 is in the middle of a sentence?

3 R. Sure.

4 Q.239 And when you end with a period, after
5 « *FERC's jurisdiction and orders* », we
6 should see a comma, and the answer
7 continues... I have it here... and the
8 rest of the answer is:

9 « ... including *FERC*
10 *Orders 888 and 890 and*
11 *associated documents*
12 *such as NOPR, 890-A,*
13 *FERC Regulations,*
14 *Federal Power Act,*
15 *Attachment K filings,*
16 *Commissioners*
17 *Statements to NERC and*
18 *Reliability*
19 *Standards. »*

20 Do you see that, Mr. Roach?

21 R. Sure.

22 Q.240 And the point here that I understand you
23 were referring to at paragraph 92 is that
24 Mr. Rose's words were not giving any
25 references to his understanding. Can you

1 explain to me why the part with regard to
2 the references was not quoted in the
3 extract referenced in your report?
4 R. Because it doesn't provide any FERC
5 citation. If you look at my expert report
6 or you look at my slides even, the two
7 crucial questions here are is Attachment
8 K part of reciprocity, and I draw directly
9 from, you know, Order 890-A where it says
10 it is. And then, the second question is:
11 Does it apply to non-public utilities
12 including foreign utilities? Again, I
13 draw on Order 890 to support that.
14 So, that's what I'm looking for.
15 What I provided here to prove those
16 points, I'm looking for that from Mr. Rose
17 and I haven't seen any of that. And so
18 that's why I said what I said, because I
19 simply haven't gotten the citations. Not
20 just references to what he has read, but
21 specific quotations like I've provided on
22 these crucial points: Is Attachment K part
23 of reciprocity? It is, FERC has said.
24 And does it apply to foreign utilities?
25 Yes, it does.

1 Q.241 But the question that was asked to Mr.
2 Rose, when he answered, the full answer he
3 gave at HQT-29 was:

4 « Please provide the
5 basis for this
6 statement including
7 all documents,
8 including FERC cases
9 that Mr. Rose relied
10 on to come to his
11 understanding. »

12 And do you agree with me that this is what
13 he did?

14 R. No, I disagree completely because I think
15 what I'm looking for, I know what I'm
16 looking for is exactly what I provided.
17 These are bold statements that he just
18 says, it's not part of reciprocity, it
19 doesn't apply to foreign utilities. And
20 so I think Mr. Rose should have pointed us
21 to explicit language from a FERC order, a
22 FERC decision, to support it. So, I don't
23 think he provided that.

24 Q.242 So, for you, the extract you quoted is
25 complete, it should not be the complete

1 answer included from... that Mr. Rose gave
2 in fact in response to this question?

3 R. I think my statement is correct. I could
4 have provided more, that's no problem, but
5 I think my statement that he hasn't
6 provided any direct FERC citations to
7 support his fairly substantial claims
8 holds.

9 Q.243 I refer you to paragraph 93 of your report
10 and what you're asserting is that for you
11 - and I'm at the second sentence:

12 *« In its 890 Orders,*
13 *the FERC... »*

14 R. Pardon me, just real quick, I was changing
15 documents, I apologize.

16 Q.244 No that's fine, no problem.

17 R. Could you tell me where you are, please?

18 Q.245 Yes, paragraph 93, the second sentence.

19 R. Okay.

20 Q.246 You mention:

21 *« In its 890 Orders,*
22 *the FERC made it clear*
23 *that it retained the*
24 *existing reciprocity*
25 *policy as applied to*

1 *foreign utilities*
2 *doing business in the*
3 *U.S. and that its*
4 *intent was to ensure*
5 *that these foreign*
6 *utilities are treated*
7 *no better or worse*
8 *than domestic non-*
9 *public utilities. »*

10 And then you define non-public as meaning:

11 *« Utilities that are*
12 *not subject to FERC*
13 *jurisdiction. »*

14 And you support this assertion by
15 referencing to paragraph 167 of FERC Order
16 890.

17 Just to have a common understanding
18 of the issue of reciprocity, Mr. Roach, I
19 have a couple of questions with regard to
20 section 6 of the OATT and as well, later,
21 Market-Based Rate Authority. So, I would
22 invite you to take FERC Order 890 at
23 paragraph 167 and the *pro forma* OATT
24 contained at FERC Order 890-B, section 6.

25 Me PAULE HAMELIN :

1 Peut-être juste avant, ma consœur a indiqué que la
2 citation qui venait ensuite... en fait, je vais
3 reprendre mon commentaire.

4 Elle a indiqué que la référence à *non-*
5 *public utilities* définie comme étant:

6 « *The term non-public*
7 *means utilities that*
8 *are no subject to FERC*
9 *jurisdiction.* »

10 Il tirait ça du paragraphe suivant de la FERC.
11 Alors, c'est son inférence à elle. Je ne pense pas
12 que... le témoin pourra dire ce qu'il en est, mais
13 je ne veux pas... qu'on pose la question au témoin,
14 mais on n'a pas d'inférence à donner ici. Je pense
15 que dans ce cas-ci la citation vient appuyer ce qui
16 est indiqué dans le reste du paragraphe de 93.

17 Me MARIE-CHRISTINE HIVON :

18 Monsieur le Président, je ne sais pas si c'est une
19 objection que ma consœur formule. Je n'avais pas
20 l'impression d'avoir mal cité le contenu du rapport,
21 en fait, j'ai lu. Et la citation, je n'ai pas
22 précisé que c'était uniquement en regard de la
23 dernière portion du paragraphe. Alors, je ne
24 comprends pas le commentaire.

25 LE PRÉSIDENT :

1 Allons-y avec la question.

2 Me MARIE-CHRISTINE HIVON :

3 Q.247 So, Mr. Roach, do you have with you FERC
4 Order 890, paragraph 167, and the *pro*
5 *forma* OATT at section 6?

6 R. I do.

7 Q.248 Do you agree that when we are in FERC
8 Order 890, at paragraph 167, before and
9 after, we are dealing with section 6 of
10 the *pro forma* OATT and its modification
11 with regard to references to RTOs and ISOs
12 and... I think we can see that, from
13 paragraph 163, for example, where it is
14 mentioned that we are discussing
15 modifications to section 6.

16 R. I can see that this has... paragraph 167
17 is under a general heading marked « 3.
18 *Non-Public Utility Transmission Providers/*
19 *Reciprocity* ». I mean, I can read all
20 these pages or we can just go with that
21 heading.

22 Q.249 Well, I want to address the issue of
23 section 6 of the OATT so I just wanted to
24 bring us in this context where in this
25 section of FERC Order 890 we discuss

1 modifications to the section 6 on
2 reciprocity in the *pro forma* OATT. But I
3 will refer you directly to section 6 just
4 to make sure that we have a common
5 understanding of what it means, okay?

6 R. Sure.

7 Q.250 So, have you looked at section 6 of the
8 *pro forma* OATT before?

9 R. At some point I'm sure, yes.

10 Q.251 I will invite you to read it for yourself
11 and I'll have a couple of questions on
12 your understanding of this article, Mr.
13 Roach.

14 R. Okay, let me take a minute and I'll read
15 it.

16 Q.252 Yes.

17 R. I've read it.

18 Q.253 My first question is do we agree that
19 section 6 provides for an obligation from
20 the transmission customer who is seeking
21 access to the transmission provider's
22 system?

23 R. That's right.

24 Q.254 It is not an obligation owed by the
25 transmission provider with such an article

1 6 or a section 6 in its OATT?

2 R. No. How it could come back to HQT, for
3 example, is through the corporate
4 affiliates. So, when FERC is looking
5 at... some member of the HQ family enjoys
6 the benefits of open access in the United
7 States, then they would be looking for
8 reciprocity from any of the affiliates.
9 That's why they use the term « corporate
10 affiliates ».

11 Q.255 So, it's an obligation from the
12 transmission customers ultimately if
13 necessary to make a demonstration that its
14 affiliates' transmission provider
15 offers... and the text here is:

16 « Comparable
17 transmission service
18 on similar terms and
19 conditions. »

20 R. I think that's fair.

21 Q.256 Is it to your knowledge that TransÉnergie
22 has a similar section 6 in its OATT?

23 R. You know, I would have to check, but this
24 is *pro forma* so... I would imagine they
25 do, but...

1 Q.257 I would now refer you to paragraphs 190
2 and 199 of FERC Order 890 which is in the
3 same section as paragraph 167, but it is
4 the Commission's determination, so it's
5 FERC ruling more or less in this section.

6 First, with respect to paragraph 190,
7 do we agree that FERC reiterates that the
8 reciprocity condition will remain the same
9 as Order 888, except for adding precisions
10 with respect to ISOs and RTOs?

11 R. Yes, that's what it says.

12 Q.258 And at paragraph 191, I will invite you to
13 read it for yourself and to confirm to me
14 that FERC retains three alternative
15 provisions to satisfy the reciprocity
16 condition? So, if you want to take a
17 minute to have a look at it and...

18 R. Yes.

19 Q.259 ... tell me when you're ready.

20 14H06

21 R. That's right, I mean you could seek a
22 bilateral agreement, you could seek a
23 waiver of OATT reciprocity or you can file
24 a safe harbour tariff and that's what BPS
25 and Big Rivers did. Those are the two

1 examples that I've provided. They were
2 seeking FERC approval for their tariff on
3 reciprocity grounds.

4 Q.260 And we agree that these three alternatives
5 existed under Order 888 and are
6 maintained, not changed in Order 890?

7 R. These three alternatives? Yes.

8 Q.261 Okay. And would you agree with me that
9 the more stringent alternative is to file
10 a safe harbour tariff with provisions that
11 are substantially conforming or superior
12 to the revised *pro forma*?

13 R. It is more stringent and I think we should
14 take note of that because Bonneville
15 Power, for example, and Big Rivers too,
16 but more Bonneville, is a major federal
17 entity in the States and they chose to go
18 this path. So, I think they wouldn't have
19 gone there readily if it had not been
20 really important to them.

21 Q.262 Do you agree that TransÉnergie is not a
22 public utility in the U.S.?

23 R. That's right, it's a non-public utility.

24 Q.263 And TransÉnergie is not what FERC calls a
25 domestic non-public utility in the U.S.?

1 R. That's right, there are foreign non-public
2 utility there, as I drew out in my slides,
3 FERC has made it clear though they want to
4 treat non-public utilities domestic and
5 foreign in a comparable fashion.

6 Q.264 Is it to your knowledge, Mr. Roach, that
7 besides its jurisdiction over public
8 utilities under article 205 and 206 of the
9 Federal Power Act, FERC also has the power
10 to rule or order on some categories of
11 non-public utilities under Section 211A of
12 the Federal Power Act?

13 R. You know, I know they have actions. I'm
14 not sure that I can say right this minute
15 it's 211, but they can take action. The
16 issue here is reciprocity of course,
17 but...

18 Q.265 I will refer you to paragraph 164 of FERC
19 Order 890 just to confirm that we are
20 talking about Section 211A.

21 R. Yes, I've read it and I understand there
22 they're creating this as a response to the
23 Energy Policy Act 2005.

24 Q.266 So, this Section 211A, and it's explained
25 at paragraph 164, states that:

1 *« Commission made by*
2 *rule Order require an*
3 *unregulated*
4 *transmitting utility*
5 *to provide*
6 *transmission services*
7 *at some conditions*
8 *that it provides to. »*

9 R. Correct.

10 Q.267 Okay. Do you know in which Section 211A
11 would apply?

12 R. No.

13 Q.268 Have you looked at Section 211A before?

14 R. I don't recall having looked at it again
15 and the issue here is reciprocity, but I
16 probably have looked at it at some point,
17 but I don't recall.

18 Q.269 I will show you a document which is
19 Section 824j of the U.S. Code. Is it to
20 your knowledge that U.S. Code is a
21 codification of the Federal Power Act?

22 R. I'll take your word on it. I don't think
23 of it in those terms but, you know, legal
24 terms but, you know...

25 PIÈCE B-233 :

1 Article 824j-1 of the U.S. Code.

2 Me MARIE-CHRISTINE HIVON :

3 Q.270 And I will suggest to you, Mr. Roach, that
4 this Section 824j is in fact Section 211A
5 of the Federal Power Act, but from what I
6 understand it's very difficult to have a
7 codification of this text. So we'll try
8 to provide you or provide maître Hamelin
9 with a cross-link with that, but this is
10 the reference we were able to identify as
11 being the text of Section 211A.

12 Me PAULE HAMELIN :

13 On pourra faire la vérification de notre côté parce
14 que j'allais justement demander à monsieur... à
15 notre expert de m'envoyer la codification exacte de
16 211 et on m'a envoyé une partie de la documentation.
17 Alors, je vais faire la vérification pour voir si on
18 arrive à la même codification mais j'avais justement
19 demandé cette information-là à notre expert.

20 Me MARIE-CHRISTINE HIVON :

21 Q.271 So, Mr. Roach, is this the first time you
22 see this text?

23 R. From Cornell University? Yes.

24 Q.272 Well, no, article...

25 R. I mean, again, I'm not a lawyer. So, when

1 you take me to the Code, that's not how I
2 go about things. I go to FERC Orders.
3 You know, that's how I can back up with
4 direct citations and reciprocity does
5 indeed apply to foreign utilities and HQT
6 would be a foreign non-public utility.
7 So, that's how I go about it.

8 You're a lawyer. You go about it
9 with code, that's fine, but I think
10 that... you know, we're just coming at it
11 from a different perspective.

12 Q.273 Okay. I think if I remember correctly,
13 Mr. Roach, my first question was whether
14 you knew, before referring you to the
15 specific text of it, whether you knew what
16 Section 211A was about and the answer I
17 think was no.

18 R. Yes, I probably looked at it, but it
19 wasn't part of my case here on reciprocity
20 on Attachment K. So, I've read a lot of
21 things, but I didn't use it, I didn't cite
22 it, I didn't rely upon it in this case.

23 Q.274 Okay. If we go at sub-section A,
24 *Definition of unregulated transmitting*
25 *utility*, it is mentioned:

1 *« In this section, the*
2 *term "unregulated*
3 *transmitting utility"*
4 *means an entity that -*
5 *(1) owns or operates*
6 *facilities used for*
7 *the transmission of*
8 *electric energy in*
9 *interstate commerce;*
10 *and (2) is an entity*
11 *described in section*
12 *824 (f) of this*
13 *title. »*

14 Do you agree with me, Mr. Roach, that
15 TransÉnergie does not operate any
16 transmission facilities for the
17 transmission of electric energy and
18 interstate commerce?

19 R. Well, again, just to try to be helpful,
20 this doesn't mean anything to me about
21 reciprocity. I know for reciprocity
22 whether HQT has assets in the United
23 States or not, that if their affiliates
24 enjoy the benefits of open access, then
25 open access reciprocity is something that

1 FERC would be looking for for HQT.

2 So, I'm trying to make it relevant to
3 the issue at hand, reciprocity. This
4 would be misleading for me to just let
5 that go.

6 Q.275 Okay. Mr. Roach, if my questions are not
7 relevant, maître Hamelin will object to
8 them. So, I would just ask you to answer
9 the questions and we'll argue later on
10 whether it was or not relevant.

11 R. Well...

12 Q.276 So, if I ask... my question was: Do you
13 agree that TransÉnergie does not operate
14 any transmission facilities for the
15 transmission of electric energy in
16 interstate commerce?

17 Me PAULE HAMELIN :

18 On peut peut-être laisser le témoin répondre. Il a
19 répondu en qualifiant sa réponse.

20 Me MARIE-CHRISTINE HIVON :

21 Monsieur le Président, avec respect, il n'a pas
22 répondu. Il a dit: J'essaie de rendre ça pertinent
23 alors je vais répondre à une autre question qui ne
24 m'a pas été posée.

25 Ma question est très précise, très claire.

1 Il le sait ou il ne le sait pas. Et on va passer à
2 la question suivante.

3 Me PAULE HAMELIN :

4 Or, le témoin a répondu sa réponse: Whether assets
5 or not... la question, c'est est-ce qu'un affiliate
6 has access au marché... alors, ça a été sa réponse.
7 Alors, il qualifie la réponse... la question qui est
8 posée et il réfère au FERC Order.

9 Me MARIE-CHRISTINE HIVON :

10 Monsieur le Président, ma consœur vient de référer
11 à une question que je n'ai pas posée. Alors, on
12 peut y aller peut-être par étape, là. Je vais y
13 venir.

14 Monsieur Roach conclut, et on en tirera
15 nos propres conclusions, à l'effet que ce n'est pas
16 pertinent pour la réciprocité, mais je n'en suis pas
17 là encore. J'en suis à savoir est-ce qu'il peut
18 confirmer ou non si TransÉnergie operates any
19 transmission facilities for the transmission of
20 electric energy in interstate commerce? Oui ou non.

21 LE PRÉSIDENT :

22 La Régie permet la question.

23 R. Again, with the important caveat that this
24 is not a definition or a distinction that
25 affects, in my view, reciprocity, I just

1 think it's important to put that on the
2 table.

3 I think it's at issue. I can't give
4 you... this is a legal document
5 apparently, but the fact that power flows
6 from Québec into the States, someone might
7 argue that that says that Hydro-Québec
8 operates facilities used for the
9 transmission of electric energy in
10 interstate commerce. Someone could argue
11 that. Is the power coming across, even
12 the Québec-New England interties, is that
13 an interstate commerce? That's a big
14 deal. That's a question.

15 So, I can't tell you based on this
16 one sentence because I need to know,
17 someone again may be arguing that because
18 that power does indeed come to the United
19 States, it's an interstate commerce.

20 Me MARIE-CHRISTINE HIVON

21 Q.277 Okay. So, you cannot answer because you
22 don't what interstate commerce means with
23 respect to this article. Is that what I
24 have to understand?

25 R. I didn't say anything like what you just

1 said. I said...

2 Q.278 What did you say?

3 R. We could have it read.

4 Q.279 Mr. Roach, do you know what interstate
5 commerce is?

6 R. I do.

7 Q.280 What is it?

8 R. It means that power is put in the
9 interstate commerce when it cross the
10 state lines. And so what I'm saying is
11 that if, you know, someone could argue
12 that the power coming across the Canadian
13 border, somehow becomes interstate
14 commerce.

15 But that's not the question for
16 reciprocity. It's not whether you own
17 facilities for interstate commerce.

18 Q.281 So what you mentioned is that someone
19 could argue that interstate commerce is
20 from Canada to the United States and it's
21 not necessarily from a United State to
22 another United State, that's what you
23 mentioned?

24 R. I'm sorry, I didn't understand that part.

25 Q.282 Okay. You said someone could argue that

1 interstate commerce could be from Canada
2 to the United states. Is that what you
3 said?

4 R. Someone could argue that.

5 Q.283 Someone could argue that. And do you
6 agree with me that someone could also
7 argue that interstate commerce is from one
8 state to another state within the United
9 States of America?

10 R. They could argue that, sure.

11 Q.284 Okay. So, you are not offering a specific
12 response to what it means. You mention
13 possibilities of what it could mean?

14 R. Well, again, I'm not a lawyer.

15 Me PAULE HAMELIN :

16 Je pense que monsieur...

17 Me MARIE-CHRISTINE HIVON :

18 Well, I'm not asking Mr. Roach to give me a legal
19 opinion. I tried to... j'ai tenté de faire toutes
20 les nuances possibles sur sa réponse et de la
21 qualifier et j'ai énormément de difficulté à... s'il
22 ne le sait pas, et c'est ce que je lui ai suggéré,
23 il était en désaccord avec moi à l'effet qu'il ne le
24 savait pas ce que ça voulait dire, alors je pense
25 que s'il le sait, qu'il nous le dise. Puis s'il ne

1 le sait pas, qu'il nous le dise également.

2 Ce n'était pas un point que j'anticipais
3 être un très grand débat ici, là, mais c'est
4 monsieur Roach qui est très hésitant à donner une
5 réponse claire sur est-ce qu'il le sait ou est-ce
6 qu'il ne le sait pas?

7 Me PAULE HAMELIN :

8 Alors, Monsieur le Président, tout d'abord, je suis
9 en désaccord complet avec la qualification que ma
10 consoeur fait du fait que monsieur Roach serait
11 hésitant ou pas? Aucunement. Il a qualifié sa
12 réponse. Il a expliqué le contexte de sa réponse,
13 d'une part, et il a également fait référence que ça
14 peut être une question juridique. Alors, il a
15 expliqué sa compréhension, pas parce qu'il ne le
16 sait pas, il a expliqué sa compréhension et ensuite
17 il vous a indiqué que c'était une question d'ordre
18 juridique.

19 Et finalement, pour compléter, il a
20 mentionné que ce n'était pas un aspect qui devait
21 nécessairement, avec le caveat que l'on doit faire
22 au niveau de la réciprocité.

23 LE PRÉSIDENT :

24 Alors, ici, la Régie va retenir l'objection. La
25 Régie a permis la question. Le témoin a répondu en

1 mettant tous les bémols qu'il jugeait nécessaire
2 pour comprendre cette disposition-là et la Régie
3 considère que toute cette question-là est rendue à
4 un stade davantage juridique qui sera entendue en
5 argumentation.

6 Le témoin a donné toute sa vision de
7 comment s'applique la réciprocité aux affiliés de
8 TransÉnergie puis aux entités affiliées qui font
9 affaire aux États-Unis. Je pense que, par la suite,
10 ça va être surtout en argumentation que la Régie va
11 être intéressée à entendre les parties sur comment
12 lire toutes ces lignes des textes américains et
13 comment ça s'applique à des entités comme le
14 Transporteur ou les affiliés du Transporteur.

15 Me MARIE-CHRISTINE HIVON :

16 Monsieur le Président, j'aurai une dernière question
17 très simple pour conclure sur ce sujet-là.

18 Q.285 Mr. Roach, am I right to understand from
19 your testimony and from my reading of your
20 report, that you did not take into
21 consideration Section 211A of the Federal
22 Power Act when you opined on the issue of
23 reciprocity applicable to TransÉnergie?

24 R. That's correct.

25 Q.286 I will now refer you to the process of

1 Market-Based Authorization. Do we agree
2 that such a process is relevant when a
3 seller of electricity is seeking to make
4 wholesale sales of electricity in the
5 United States?
6 R. It's relevant when they seek Market-Based
7 rates, yes.
8 Q.287 Yes, okay. And it is the seller who will
9 need to obtain the Market-Based
10 Authorization from FERC?
11 R. That's right.
12 Q.288 And to obtain such an authorization, the
13 seller will have to demonstrate, among
14 other things, a lack of vertical market
15 power?
16 R. That's correct. That's one of the
17 provisions.
18 Q.289 And I will refer you to an exhibit that we
19 filed earlier in the cross-examination of
20 other witnesses which is HQT-49, B-202
21 which is article 35.37 of the Code of
22 Federal Regulation. You have that with
23 you, Mr. Roach?
24 R. I have it.
25 Q.290 Have you looked at this Section 35.37

1 before?

2 R. Again, you and I are coming at things
3 differently. There are extensive FERC
4 Orders with extensive pros to talk about
5 what you have to do to get market power.
6 That's what I read, that's what my
7 colleagues read. We don't come at it
8 through the Code.

9 Q.291 Okay. So, just as a general
10 understanding, when you testify or write
11 a report on FERC Orders and on the issue,
12 in particular the issue of reciprocity,
13 you do not go back to the sections of
14 regulations or statutes or acts referred
15 to by FERC in its Orders. You look at
16 what FERC says about these statutory or
17 regulatory texts. Is that what I have to
18 understand?

19 R. Sure, we're not lawyers and we rely on
20 FERC's Orders and you can see in the
21 expert report that's what we quote. That
22 is often the best way or one of the better
23 ways of getting FERC's logic or rationale.
24 But we're not lawyers. We don't go back
25 to the Code.

1 Q.292 Okay. So, from your general
2 understanding, and if you prefer, I won't
3 refer you to the wording of the text, is
4 it an obligation... do you agree with me
5 that such an obligation to demonstrate the
6 lack of vertical market power is relying
7 on the seller not its foreign transmission
8 provider affiliate?

9 14H25

10 R. Again, in the immediate circumstance, yes,
11 the supplier would have to make the case
12 for market-based rates. But all of this,
13 once again, has to be conditioned or
14 caveated on the notion of reciprocity.

15 Q.293 And the seller can demonstrate either that
16 its affiliate has filed its OATT or that
17 it otherwise offers comparable non-
18 discriminatory access to such transmission
19 facilities?

20 R. Correct.

21 Q.294 You have, Mr. Roach, referred in your
22 testimony today and your testimony in
23 chief, and you are referring in your
24 report to the example of Big Rivers?

25 R. Correct.

- 1 Q.295 And I refer you to paragraph 95 of your
2 report, which is one example where you
3 refer to the Big Rivers case. I
4 understand, Mr. Roach, that Big Rivers is
5 a domestic non-public utility, you agree
6 with me, in the U.S.?
- 7 R. Correct.
- 8 Q.296 Owning transmission facilities in the
9 United States as well?
- 10 R. Correct.
- 11 Q.297 Big Rivers is located in the centre of
12 Eastern Interconnection?
- 13 R. It's in Kentucky, it's in the Eastern
14 Interconnection.
- 15 Q.298 It covers the State of Kentucky and it is
16 synchronized with the rest of the Eastern
17 Interconnection as well?
- 18 R. I think that's right.
- 19 Q.299 Is it to your knowledge that Big Rivers is
20 experiencing congestion problems?
- 21 R. I don't know that for a fact but, you
22 know, I don't... so, I can't tell you
23 right now.
- 24 Q.300 You don't know, okay. And did you know
25 that since December 1st, 2010 Big Rivers

1 has joined MISO, Midwest ISO?

2 R. I didn't know that.

3 Q.301 I will, just for the record, refer you to
4 a news release dated December 1st, 2010
5 that I will file as exhibit B-233 I think
6 I'm at. 234.

7 LE PRÉSIDENT :

8 Madame Guilhermond, le numéro de...

9 LA GREFFIÈRE :

10 234.

11 LE PRÉSIDENT :

12 234?

13 Me MARIE-CHRISTINE HIVON :

14 234. B-234.

15 PIÈCE B-234 :

16 News release dated December 1st, 2010.

17 Me MARIE-CHRISTINE HIVON :

18 Q.302 So, you have the document before you, Mr.
19 Roach?

20 R. I do.

21 Q.303 We see in the first paragraph:

22 « The Midwest

23 Independent

24 Transmission System

25 Operator announced

1 *today the successful*
2 *integration of Big*
3 *Rivers Electric*
4 *Corporation into the*
5 *Midwest Energy Market*
6 *Operations with*
7 *Midwest ISO now*
8 *serving as Big Rivers'*
9 *regional Balancing*
10 *Authority. Big*
11 *Rivers, based in*
12 *Henderson, Kentucky,*
13 *is the 34th*
14 *transmission owner*
15 *whose systems are*
16 *integrated into*
17 *Midwest ISO and the*
18 *regional transmission*
19 *organization's fifth*
20 *new transmission-*
21 *owning member since*
22 *November 2009. »*

23 *So, you did not know that before?*

24 R. *No, that's fine. I think it's interesting*
25 *that Big Rivers, a non-public utility,*

1 would first go and get its safe harbour
2 OATT, or attempt to get it. But then,
3 they even take a step further, if I'm
4 understanding this correctly, and I would
5 want to check it, but if they joined
6 Midwest ISO, they will now operate under
7 the Midwest ISO OATT. So, they've, you
8 know, they've taken reciprocity to the
9 next step.

10 Q.304 This is your interpretation of this news
11 release?

12 R. Again, I just saw this for the first time.
13 If they've become a member, then what you
14 do is you operate under the ISO's
15 transmission Tariff.

16 Q.305 Am I right to understand, Mr. Roach, from
17 your report and your testimony in this
18 case that your opinion is that reciprocity
19 requires the addition of an Appendix K to
20 TransÉnergie's OATT?

21 R. Well, Order 890 requires an Appendix K,
22 and yes, that having an Appendix K would
23 be part of a reciprocity requirement.

24 Q.306 So, the answer is yes, to your opinion
25 reciprocity requires the addition of an

1 Appendix K to TransÉnergie's OATT?

2 Me PAULE HAMELIN :

3 C'est parce que vous avez posé la même question puis
4 il vous a parlé tout d'abord de 890 et de
5 l'obligation d'avoir un *Attachment K*. Alors...

6 Me MARIE-CHRISTINE HIVON :

7 Mais ma question c'était sur la réciprocité
8 justement, alors c'est pour ça que je la répète
9 parce que la réponse donnait une réponse à une autre
10 question, Maître Hamelin.

11 Me PAULE HAMELIN :

12 Bien, je pense qu'il a répondu en qualifiant sa
13 réponse.

14 LE PRÉSIDENT :

15 La Régie permet la question s'il y a nuance
16 différente de la précédente.

17 Me MARIE-CHRISTINE HIVON :

18 Q.307 So, the question was, Mr. Roach, whether
19 you were of the opinion that reciprocity
20 requires the addition of an Attachment K
21 to TransÉnergie's OATT?

22 R. Yes.

23 Q.308 And that for you such an Attachment K has
24 to include all nine principles discussed
25 by FERC in Order 890?

1 R. Yes, not for me but for FERC. FERC would
2 want to see HQT showing how it lives up to
3 those nine principles.

4 Q.309 Yes, I'm referring to your opinion, I
5 guess, of your understanding of FERC Order
6 890, this is your opinion on the subject?

7 R. Yes, it's my opinion that FERC would look
8 for all nine principles.

9 Q.310 And at paragraph 95, you support your
10 opinion specifically on the example of Big
11 Rivers, what Big Rivers did and the
12 decision of FERC in the case of Big
13 Rivers?

14 R. Yes, I think it's a good case example.

15 Q.311 And if I follow your opinion, an
16 Attachment K that would not include all
17 nine principles would not be, in FERC's
18 eyes, sufficient to offer comparable
19 transmission service?

20 R. I think they would have to address all
21 nine. They can, as it says here, they can
22 explain differences. But I think it must
23 substantially conform with or be superior
24 to the Attachment K *pro forma*.

25 Q.312 So, for you is it an all-or-nothing test?

1 R. No, I think it's not so much a test as a
2 compliance. I mean, for example, HQT not
3 providing an Attachment K at all clearly
4 is a simple test, FERC would not allow
5 that. But if HQT or Big Rivers was able
6 to come in and say: We're going to be
7 different from the *pro forma* Attachment K,
8 but we think we're substantially
9 conforming or a bit better, then FERC
10 would listen to all of them.

11 Q.313 I'm coming back to what we just covered a
12 minute ago. For you, there has to have an
13 Attachment K and it has to include all
14 nine principles. And then, and I'm just
15 trying to understand, you say it's not an
16 all-or-nothing test. What is the margin
17 applicable? What is the difference
18 between having an Appendix K and meeting
19 all nine principles and not being an all-
20 or-nothing test?

21 R. Hold on one second, please.

22 What I was doing is this is the
23 Order, the FERC Order conditionally
24 granting petition for declaratory order
25 for Big Rivers and this Order includes a

1 discussion of each of the nine principles.
2 So, this goes into depth on Attachment K.
3 And that's why I depend on it.

4 So, what I'm saying is here's a good
5 example of a non-public utility asking
6 FERC for safe harbour and reciprocity and
7 FERC is here discussing each of the nine,
8 they list them out, they are headings on
9 each of the nine. The flexibility is that
10 FERC can agree with or disagree with some
11 specifics, for example, whether a
12 particular stakeholder process is
13 something that really lets them live up to
14 two or three of the principles. I think
15 that's the flexibility.

16 Q.314 I refer you to paragraph 89 of your
17 report, Mr. Roach, where you mention:

18 « To meet the
19 reciprocity
20 requirement of the
21 FERC, we would
22 respectfully request
23 that the Régie require
24 HQT to add an
25 Attachment K to its

1 OATT which explicitly
2 allows for timely and
3 meaningful input by
4 all stakeholders.

5 More broadly, HQT's
6 Attachment K must be
7 shown to meet all nine
8 of the FERC criteria
9 for a "coordinated,
10 open and transparent"
11 transmission planning
12 process. To do
13 otherwise might put
14 HQ's or its
15 affiliate's ability to
16 export electricity to
17 the United States in
18 jeopardy. »

19 So, you're referring here to meeting the
20 reciprocity requirement of FERC and having
21 all nine principles... you require the
22 Régie to request an Attachment K with all
23 nine principles addressed?

24 R. I do. I think that's what FERC has asked
25 for. There's flexibility on what you say

1 under each of those nine principles, and
2 beyond that... the first part of the
3 paragraph is I think the most important
4 which is that that Attachment K has to
5 allow for timely and meaningful input by
6 all stakeholders. I think that's what
7 FERC is looking for most in its expansion
8 or deepening of its planning requirement.

9 Q.315 So, for you, it is a requirement that is
10 mandatory, but the consequence of not
11 including one for you in this paragraph is
12 that it might put HQ's ability to export
13 electricity in the U.S. in jeopardy. So,
14 there is a risk for you, but you're not
15 sure of the consequences, right?

16 R. I'm not understanding your questions.
17 Look, if HQT wants to be compliant with
18 890, and that's what they were attempting
19 to do they said with harmonization, then
20 there are other requirements, and
21 Attachment K is one of those requirements.
22 HQT did not even provide an Attachment K.
23 It's very straightforward here. They
24 couldn't comply if they don't even put in
25 their homework, they can't get a grade.

1 So, that's my point.

2 But yes, if and when the Régie would
3 order them to do that, I think the
4 respectful, the right, the appropriate
5 thing would be for them to provide an
6 Attachment K that runs through each of the
7 nine principles and tells FERC how it's
8 going to comply.

9 Q.316 I'm coming back to my question, Mr. Roach.
10 You are using the word « might ». To do
11 otherwise, and I'm reading your paragraph
12 89:

13 « To do otherwise
14 might put HQ's or its
15 affiliates' ability to
16 export electricity to
17 the United States in
18 jeopardy. »

19 Is it a risk or is it a certainty, based
20 on your opinion?

21 R. It's a risk.

22 Q.317 It is a risk.

23 R. There's no certainty on how FERC would
24 rule on this. There's no certainty that
25 it would be an issue pushed. But I think

1 there is a risk.

2 14H40

3 Q.318 I now refer you to the second argument
4 starting at paragraph 96 of your report.
5 You are responding to Mr. Rose's second
6 argument:

7 « *FERC's motivation*
8 *for Attachment K.* »

9 And in paragraph 96, you comment on what
10 you interpret as being Mr. Rose's second
11 argument and you write:

12 « *The second of Mr.*
13 *Rose's three arguments*
14 *appears to be that*
15 *because in his view*
16 *the problems that*
17 *motivated the FERC to*
18 *require Attachment K*
19 *simply do not exist in*
20 *HQT's transmission*
21 *system, the FERC would*
22 *waive the requirement*
23 *for an Attachment K*
24 *for HQT.* »

25 So, you are really interpreting what Mr.

1 Rose says as the fact that FERC would
2 waive something, waive a requirement?

3 R. I read his quote to mean that he says that
4 in my view TransÉnergie does not need to
5 file an Attachment K. I say this because
6 the problems that exist in the U.S. in
7 response to which FERC believed that there
8 was a need for Attachment K do not exist
9 for TransÉnergie.

10 And my simple point is that the
11 requirement for an Attachment K is not
12 conditional. It doesn't say: If you have
13 congestion or investment problems that you
14 file in Attachment K, it's simply a
15 requirement to file Attachment K.

16 Q.319 Yes. This is what you're saying. And at
17 paragraph 97, you are quoting Mr. Rose
18 which is this reference, this quote is
19 referring to:

20 « The acute U.S.
21 transmission system
22 deficiencies which are
23 the lack of
24 transmission
25 investment by

1 *transmission*
2 *providers. A*
3 *significant congestion*
4 *on the transmission*
5 *system reliability*
6 *problems and lack of*
7 *coordination among*
8 *components of the*
9 *interconnection*
10 *transmission system. »*

11 And at paragraph 98, you mention:

12 « *Mr. Rose then*
13 *launches into a*
14 *lengthy discussion*
15 *attempting to show*
16 *that HQT does not*
17 *suffer from these*
18 *problems. »*

19 And you continue, and this is the part on
20 which I will have some questions for you:

21 « *It is not*
22 *constructive to*
23 *respond to this*
24 *discussion because it*
25 *has no bearing on*

1 *whether the FERC would*
2 *require an Attachment*
3 *K from HQT. »*

4 We'll stop here and we'll continue later.

5 So, when I read that, Mr. Roach, I
6 understand that you do not feel it is
7 constructive to respond. Do I have to
8 understand that you have not performed an
9 analysis to review and compare the level
10 of investments and transmission in the
11 U.S. with the one in TransÉnergie?

12 R. I haven't. Other members of the panel
13 have, but my point is just simply that
14 it's not constructive to do that because
15 the requirement is not conditional.

16 Again, FERC did not say: If you have
17 these problems, give me an Attachment K.
18 They simply required an Attachment K and
19 HQT has not provided one.

20 Q.320 And would your answer be the same with
21 respect to an analysis on the acuteness of
22 congestion problems in the U.S. compared
23 with the specific situation of
24 TransÉnergie?

25 R. That's correct. Again, I just don't see

1 that being what FERC is looking for;
2 again, they just want to file, have HQT
3 file an Attachment K.

4 Q.321 Okay. This is, I understand, your
5 interpretation.

6 And for you the absence or existence
7 of these problems for TransÉnergie, has no
8 bearing at all on whether there should be
9 an Attachment K? This is what I have to
10 understand?

11 R. That's right. Now, when FERC looks at the
12 Attachment K, it's trying to be flexible
13 by stating principles rather than stating
14 do this and do that.

15 So, whatever HQT's views on its
16 system are, those can be reflected there
17 but the simple matter of providing an
18 Attachment K, I don't... it's not a
19 conditional requirement. It's simply a
20 requirement filed in Attachment K.

21 Q.322 And I continue my reading of paragraph 98,
22 you mention in the middle of the
23 paragraph:

24 *« It has no bearing*
25 *because the FERC's*

1 *Order 890 did not say*
2 *if a utility suffers*
3 *from any of these*
4 *problems, then that*
5 *utility must show that*
6 *it has a transmission*
7 *planning process*
8 *consistent with this*
9 *Order by providing an*
10 *Attachment K. That*
11 *is, in no way, has Mr.*
12 *Rose shown that the*
13 *FERC stated the*
14 *requirement for an*
15 *Attachment K as a*
16 *conditional*
17 *requirement. »*

18 So, you would expect FERC to mention in
19 its Order 890 that one of the measures
20 would be conditional to justify the fact
21 that it would not be part of the OATT?

22 R. I think that's right actually. I think
23 that if FERC meant it to be conditional,
24 they would have invited someone to come in
25 and say: Either file it or demonstrate

1 that you don't need to file it because you
2 don't suffer from ABC.

3 They simply asked for it. It's not
4 that you don't reflect your particular
5 circumstances when you file it. You just
6 have to file an Attachment K.

7 Q.323 Okay. So, just to make sure that we
8 understand what you are saying, I will
9 refer you to the transcripts, volume 20 of
10 your testimony in chief of April 19, at
11 page 122 and 123.

12 So, volume 20, page 122, line 11, so
13 you testified to the fact that you
14 mentioned:

15 *« So, let me move to*
16 *the second argument on*
17 *page 8 here. Mr. Rose*
18 *says his second reason*
19 *for believing that HQT*
20 *does not have to file*
21 *an Attachment K is*
22 *that in his belief,*
23 *there is... none of*
24 *the transmission*
25 *problems which*

1 motivated FERC to
2 order an Attachment K
3 are present in Quebec.
4 He mentions things
5 like a lack of a
6 transmission
7 investment, no
8 congestion.
9 Pascal has already
10 spoken to... raised
11 some of his doubts on
12 whether that's
13 factually true. Bill
14 Marshall will follow
15 me and raise some of
16 his own doubts.
17 All I wanted to say
18 here is that I think
19 Mr. Rose is wrong when
20 he implies with his
21 discussion that
22 somehow Attachment K
23 is a conditional
24 requirement.
25 And what I mean by

1 *that is FERC did not*
2 *say: Look, if you*
3 *have, you,*
4 *transmission provider,*
5 *if you have*
6 *transmission*
7 *congestion or you need*
8 *investment, then give*
9 *us the Attachment K.*
10 *Their requirement was*
11 *simple: Give us an*
12 *Attachment K. There*
13 *is no conditionality*
14 *here and I think Mr.*
15 *Rose was wrong to*
16 *imply that. »*
17 So, this is still your testimony today,
18 Mr. Roach?
19 R. Yes.
20 Q.324 So, the Régie should not look at the
21 situation in Québec as to the issue of
22 congestion or level of investment before
23 deciding whether it is appropriate in
24 Québec to include or not an Attachment K?
25 R. You said the Régie?

1 Q.325 Yes.

2 R. Well, again, presuming the issue is
3 reciprocity, then that statement is
4 correct. The provision of an Attachment
5 K is an obvious requirement. It's not...
6 and so, yes, that's got to be provided.
7 Now, exactly what it says under each of
8 the nine principles? There is flexibility
9 there. That's how FERC built it. But
10 the fact that HQT would have to have one
11 and not a blank page? Yes.

12 Q.326 So, the Régie would not have any
13 flexibility here as to requiring or not an
14 Attachment K to TransÉnergie?

15 R. If the concern is reciprocity, I think
16 there is a substantial risk if HQT does
17 not file an Attachment K.

18 Q.327 To your knowledge, are there any examples
19 in Order 890 where FERC makes explicit
20 references to the fact that a requirement
21 is conditional or elective with respect to
22 the content of an OATT?

23 R. You know, I haven't thought of it. I
24 can't name one right now off the top of my
25 head. I don't know that it operates that

1 way. Again, the kind of flexibility it
2 went out of its way, or at least FERC
3 thinks it went out of its way, to say it
4 was being flexible by giving nine
5 principles instead of dictating what that
6 process looks like.

7 Q.328 But do you agree, Mr. Roach, that what
8 prompted FERC to order or to include an
9 Appendix K was the critical need for a new
10 transmission infrastructure in the U.S.
11 and the fact that transmission congestion
12 plague most regions of the United States?

13 R. I think if you ask FERC, it's always their
14 motivation to eliminate or reduce undue
15 discrimination.

16 Now, the symptoms of undue
17 discrimination can include someone not
18 building transmission so that there is
19 congestion or so that they can't feel a
20 competitor's transmission need.

21 But I think what motivates FERC
22 typically and they say it in most orders
23 is trying to combat undue discrimination.

24 Q.329 And in this trial to reduce undue
25 discrimination, they will decide to

1 include or they will take a number of
2 specific measures?

3 R. I'm sorry. I didn't get your question,
4 they being FERC?

5 Q.330 FERC and combatting, as you mentioned,
6 undue discrimination will make a choice
7 and decide to include different measures
8 in Order 890, for example? There are
9 various measures, specific measures; you
10 agree with me?

11 R. That's right and Attachment K is one of
12 them of an attempt to open up a planning
13 process, yes.

14 Q.331 And my next question is if I were to ask
15 you what prompted FERC to include this
16 specific measure of an Attachment K, why,
17 in all possibilities, decide this one, do
18 you agree with me that it is related to
19 the under-investment problems and
20 congestion problems in the U.S. in
21 particular?

22 R. I wouldn't put it that way. Again, I
23 certainly agree that undue discrimination
24 can mean that a transmission provider
25 discriminates against the competitor by

1 not building transmission. So, he should
2 build that. Or by, you know, not planning
3 the right kind of transmission investment.
4 So, they only plan investments that
5 accommodate their own generating affiliate
6 or they don't reduce congestion because
7 congestion leads to more profit for them.

8 So, all of those things can happen
9 from undue discrimination. But if you
10 read it, you know, FERC continues to
11 motivate its actions by a fear of undue
12 discrimination.

13 Q.332 I will refer you, Mr. Roach, to a fact
14 sheet that was filed by Mr. Cormier at the
15 beginning of his testimony. FERC fact
16 sheet, the quote, specific quote - I'm
17 sorry, I don't have the specific...

18 Me PAULE HAMELIN :

19 C-6.91.

20 Me MARIE-CHRISTINE HIVON :

21 C-6-91, thank you.

22 Q.333 Do you have that, Mr. Roach, with you?

23 R. I believe I do.

24 Q.334 This document has been presented like a
25 broad overview or a summary of FERC Order

1 890 that accompanied FERC Order 890 and is
2 coming from FERC. I would like to refer
3 you to the third page of that document
4 providing an overview or brief overview,
5 as I can read, of the coordinated, open
6 and transparent transmission planning.
7 And this again comes from FERC and FERC
8 mentions in the only big paragraph
9 referring to the whole transmission
10 planning:

11 « The Commission
12 concludes that
13 transmission providers
14 have a disincentive to
15 remedy increasing
16 transmission
17 congestion on a non-
18 discriminatory basis
19 and that the current
20 pro forma OATT does
21 not adequately address
22 this problem.
23 Therefore, the Final
24 Rule requires
25 that... »

1 And here we have a summary of... four
2 paragraphs of the measure of Appendix K.

3 Do you agree with me here that in
4 this brief overview, FERC directly linked
5 this measure to the remedy of congestion
6 and not to undue discrimination or that it
7 is to solve a problem of transmission
8 congestion that it supports this open
9 planning?

10 R. No, I don't and the reason I don't is
11 that, if you turn back to the first page
12 of this document and you look at the
13 heading, the purpose of the Final Rule,
14 what's listed here is in the three
15 bullets, the first one is to strengthen
16 the *pro forma* OATT to ensure that it
17 achieves its original purpose of remedying
18 undue discrimination.

19 And the second one, to provide
20 greater specificity in the *pro forma* OATT
21 to reduce opportunities for the exercise
22 of undue discrimination, make undue
23 discrimination easier to detect and
24 facilitate the Commission's enforcement.

25 So, if I was reading this document

1 and looking for the stated purpose of
2 FERC, I would go to the first page and it
3 clearly links it to undue discrimination.

4 Q.335 And if I come back to the discussion we
5 had a minute ago with respect to what
6 prompted FERC to choose this specific
7 measure in particular, you would still not
8 agree that congestion and under-
9 investments are part of the problems that
10 FERC is trying to cure?

11 R. I don't agree that that's their primary
12 motive. I think the front part of this,
13 the first page gives you their primary
14 motive. Even in your, what you quoted, he
15 said remedy, it says:

16 « *Remedy increasing*
17 *transmission*
18 *congestion on a non-*
19 *discriminatory*
20 *basis. »*

21 I think FERC consistently goes after this
22 non-discrimination.

23 But again, as I've said several
24 times, the results of non-discrimination
25 can be inadequate transmission and it can

1 be congestion, but the motive is to
2 eliminate undue discrimination.

3 Q.336 I will now refer you to the third argument
4 which is starting at paragraph 102 of your
5 report. And I'm referring more
6 specifically at paragraph 103. And the
7 title of this argument, third argument or
8 this section is *Substantial conformance*
9 *with or superiority to the pro forma.*

10 Monsieur le Président, juste pour vous mentionner,
11 j'en ai peut-être pour une quinzaine de minutes. Si
12 c'était possible, on pourrait vraisemblablement
13 terminer le contre-interrogatoire de monsieur Roach.

14 LE PRÉSIDENT :

15 Malgré tout, la Régie va ajourner à 15 h pour les
16 questions de support, la logistique et autres.

17 Me MARIE-CHRISTINE HIVON :

18 D'accord.

19 LE PRÉSIDENT :

20 Il vaudrait mieux arrêter maintenant puis demain
21 matin on pourra reprendre avec cette question-là
22 puis les suivantes.

23 Me MARIE-CHRISTINE HIVON :

24 Alors, j'en aurai pour maximum 15 minutes demain
25 matin.

R-3669-2008
9 MAI 2011

PANEL EBM
Contre-interrogés par Me Hivon

1 LE PRÉSIDENT :

2 Malgré tout.

3 Me MARIE-CHRISTINE HIVON :

4 D'accord.

5 LE PRÉSIDENT :

6 Donc, nous ajournons à 9 h 00 demain matin.

7 AJOURNEMENT AU 10 MAI 2011 À 9H00.

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1 Je, soussignée, DENISE TURCOT, sténographe
2 officielle bilingue, certifie sous mon serment
3 d'office que les pages qui précèdent sont et
4 contiennent la transcription fidèle et exacte de mes
5 notes, le tout conformément à la loi.

6
7 Et j'ai signé,

8
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10 _____
11 DENISE TURCOT

12 Sténographe officielle bilingue
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