

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 10 MAI 2011

VOLUME 28

DENISE TURCOT
sténographe officielle

R-3669-2008
10 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)

TABLE DES MATIÈRES

Page

LISTE DES ENGAGEMENTS	4
LISTE DES PIÈCES	5
DÉCISION	6
PANEL EBM	
PASCAL CORMIER	
RICHARD ST-JEAN	
CRAIG ROACH	
WILLIAM MARSHALL	
Contre-interrogés par Me M.-C. Hivon	11
Contre-interrogés par Me Eric Dunberry	18
Contre-interrogés par Me M.-C. Hivon	182

LISTE DES ENGAGEMENTS

Page

#16 : Provide the list of documents reviewed and relied upon by Mr. Marshall for purposes of his report and confirm if he was provided with a translated copy of documents HQT-1, document 1; HQT-9, documents 1, 2, 3, 4 and 4.1; HQT-10, documents 1, 2, 3, 4, 5 and 6; and HQT-29, documents 1, 2, 3, 6 and 8. 17

R-3669-2008
10 MAI 2011

LISTE DES PIÈCES

Page

B-235 :	Fact sheet on Bonneville Power	
	Administration.	17
B-236 :	Map of the ISO RTO Council.	187
B-237 :	June 2010 NOPR by FERC.	201

1 EN L'AN DEUX MILLE ONZE (2011), ce dixième (10e)
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 10 mai 2011,
11 dossier R-3669-2008, Phase 2. Demande relative à la
12 modification des Tarifs et conditions des services
13 de transport d'Hydro-Québec à compter du 1er janvier
14 2009. Poursuite de l'audience.

15 LE PRÉSIDENT :

16 Merci. Alors, dans un premier temps, la Régie va
17 rendre sa décision sur la réponse à l'engagement 16.
18 Alors, la décision se lit comme suit. Newfoundland
19 Labrador Hydro demande d'avoir accès aux données
20 caviardées de la pièce B-132, HQT-8, document 5.1,
21 qui a été déposé par le Transporteur en réponse à la
22 question 6.2 de la demande de renseignements numéro
23 1 de NLH. Cette pièce contient le Plan des charges
24 et des ressources pour la période 2009-2019. Cette
25 demande fait suite au dépôt de l'engagement 16 pris

1 par le Transporteur le 9 février 2011, qui était
2 formulé de la façon suivante:

3 « Identifier à l'égard
4 du respect de
5 l'article 37.1 iii) et
6 iv) où exactement dans
7 le Plan des charges
8 coté HQT-8, document
9 5.1, on trouve la
10 puissance exacte de
11 chaque centrale,
12 contrat ou ressource
13 (qui est désignée et
14 non seulement
15 disponible, mais
16 désignée) et quelle
17 est la puissance
18 totale désignée. »

19 Le Transporteur a répondu à cet engagement
20 le 15 février 2011 et a déposé une réponse amendée
21 le 12 avril 2011.

22 La Régie note que le Plan des charges et
23 des ressources a été déposé au dossier par le
24 Transporteur en réponse à la question 6.2 de la
25 demande de renseignements de NLH. Cette demande

1 visait à savoir si l'article 37.1 iii) rencontre les
2 exigences de l'ordonnance 890-A en ce qui a trait à
3 la transmission annuelle par le Distributeur au
4 Transporteur d'une description de chaque ressource
5 contribuant à la fourniture de l'électricité
6 patrimoniale.

7 Toutefois, par sa présente demande, soit
8 l'accès aux données caviardées, NLH vise maintenant
9 un objectif différent. NLH a justifié le besoin
10 d'obtenir les données caviardées contenues dans le
11 Plan des charges et des ressources par le fait que
12 cette information lui était nécessaire pour suivre
13 les désignations et les suppressions de ressources,
14 ainsi que pour s'assurer que des ventes à des tiers
15 ne se fassent à partir de ressources désignées.

16 La Régie considère que la divulgation des
17 données caviardées dans le document HQT-8, document
18 5.1, n'est pas pertinente dans le contexte d'un
19 débat de principe d'ordre réglementaire portant sur
20 le bien-fondé d'amendements ou de modifications à
21 apporter aux Tarifs et conditions.

22 Selon la Régie, la nature des informations
23 déjà fournies et la nomenclature des lignes et des
24 colonnes des tableaux transmis par le Distributeur
25 au Transporteur sont suffisantes aux fins de ce

1 débat de principe.

2 De plus, la Régie prend également en
3 considération le fait que les données caviardées
4 appartiennent à Hydro-Québec dans ses activités de
5 production et que cette dernière invoque que leur
6 divulgation pourrait lui causer un préjudice
7 commercial.

8 La Régie considère que l'effet
9 préjudiciable que pourrait entraîner la divulgation
10 des données caviardées dépasse largement la valeur
11 de ces données aux fins du présent débat.

12 En conséquence, la Régie conclut que la
13 réponse à l'engagement 16 est suffisante. Ceci
14 termine la décision de la Régie.

15 Alors, comme autre question d'intendance
16 aux fins de la planification du reste de la journée
17 et des travaux ultérieurs, la Régie aimerait avoir
18 une indication du temps prévu pour l'interrogatoire.
19 Le présent témoin, vous avez mentionné environ 15
20 minutes hier. Et également pour le reste des
21 témoins ce qu'il en serait pour les deux procureurs.

22 Me MARIE-CHRISTINE HIVON :

23 Alors, bon matin, Monsieur le Président, Madame,
24 Monsieur les Régisseurs. Alors, dans un premier
25 temps, avec monsieur Roach, nous en avons

1 effectivement entre cinq et dix minutes ce matin
2 pour terminer son contre-interrogatoire.

3 L'objectif du côté du Transporteur est de
4 terminer les contre-interrogatoires aujourd'hui.
5 Nous contre-interrogerons d'abord monsieur Marshall
6 sur la totalité des sujets qu'il aborde dans ses
7 deux rapports. Et ensuite...

8 Me ÉRIC DUNBERRY :

9 Bonjour, Monsieur le Président, Madame, Monsieur les
10 Régisseurs. Nous aurons ensuite un relativement
11 court contre-interrogatoire de monsieur St-Jean sur
12 la présentation qu'il a faite. Donc, ce sera la fin
13 à ce moment-là des contre-interrogatoires avec
14 monsieur St-Jean.

15 Alors, oui, l'objectif, c'est de terminer
16 aujourd'hui. Je pense bien que nous aurons terminé
17 avec monsieur Marshall aujourd'hui. S'il nous
18 manque un peu de temps en fin de journée et si la
19 Régie veut poursuivre, je pense que monsieur St-
20 Jean, ce sera une demi-heure ou 45 minutes et on
21 pourra à ce moment-là demain matin, en tout début de
22 journée, terminer avant la pause au plus tard.

23 LE PRÉSIDENT :

24 Alors, la Régie vous remercie pour ces informations.
25 De plus, aujourd'hui, il y aura une contrainte, nous

1 devrons ajourner à 14 h 30 et donc, on pourra
2 continuer et finaliser demain matin au besoin. Et
3 par la suite, comme annoncé, la Régie pourra traiter
4 l'objection à la réponse fournie par l'Union des
5 consommateurs et RNCREQ. Alors, maître Hivon.

6 Me MARIE-CHRISTINE HIVON :

7 Oui. Alors, dans un premier temps, j'aimerais
8 distribuer la décision, la version complète de la
9 décision à la demande de maître Hamelin hier, D-
10 2002-260. Alors, je remets une copie à la Régie.

11 9H09

12 PANEL EBM

13 CONTRE-INTERROGÉS PAR Me MARIE-CHRISTINE HIVON :

14 Q.1 So, Mr. Roach, good morning.

15 R. Good morning.

16 Q.2 Yesterday, we were at paragraph 102 of
17 your report which was your response to the
18 third argument of Mr. Rose and I would
19 like to refer you to paragraph 103 on page
20 52 of your report where you mention in the
21 middle of the paragraph:

22 « Obviously, to meet
23 this FERC standard,
24 HQT would first have
25 to have a written

1 *Attachment K rather*
2 *than a blank page and*
3 *what would need to be*
4 *written in HQT's*
5 *Attachment K would be*
6 *a compelling argument*
7 *that HQT's planning*
8 *process addresses all*
9 *nine principles of the*
10 *principles that FERC*
11 *set in the 890 Orders*
12 *for a Utilities*
13 *Transmission*
14 *Planning. »*

15 And then, at paragraph 104, you mention:

16 *« Mr. Rose was asked*
17 *by at least two*
18 *intervenors to state*
19 *how the HQT process*
20 *was substantially*
21 *conforming or*
22 *superior.*
23 *Unfortunately, he did*
24 *not answer the*
25 *question directly,*

1 *that is he did not*
2 *address each of the*
3 *nine principles in*
4 *full, in a manner, the*
5 *FERC would require.*
6 *Rather he references*
7 *other sections of his*
8 *testimony which*
9 *mention a wide range*
10 *of HQT activities. »*

11 And on top of page 53, you continue:

12 *« While the activities*
13 *described in these*
14 *references surely have*
15 *merit, Mr. Rose's*
16 *reference to them is*
17 *not sufficient to show*
18 *a conformance with*
19 *FERC's requirements*
20 *for Attachment K. »*

21 So, is it your opinion that FERC would not
22 consider whether there exists what we call
23 a functional equivalent to an Attachment
24 K?

25 R. They would want to see an Attachment K.

- 1 It's that simple.
- 2 Q.3 So, the answer is no, they would not?
- 3 R. I don't know what a functional equivalent
- 4 means. They would want to see a written
- 5 Attachment K.
- 6 Q.4 And am I right to understand that what you
- 7 did to respond to Mr. Rose's argument or
- 8 opinion that we just read, it's that you
- 9 respond to Mr. Rose's references to
- 10 current planning measures that he is
- 11 describing. You refer to what he is
- 12 describing or what he is referencing?
- 13 R. That's correct. I went to what he was
- 14 suggesting demonstrated that the existing
- 15 planning process was comparable. So, I
- 16 went to his references. I also read some
- 17 other documents which are in the list we
- 18 provided.
- 19 Q.5 But in this section of your report, you
- 20 are referring to how Mr. Rose presented
- 21 what he called the existing planning
- 22 measures of Hydro-Québec?
- 23 R. That's right, as referenced, I went to the
- 24 paragraphs listed here.
- 25 Q.6 You mentioned in your testimony, Mr.

1 Roach, references to Bonneville Power
2 Administration and my last line of
3 questions will be with regard to
4 Bonneville just to make sure that we have
5 a full presentation of what Bonneville is.
6 I would like to refer you to a fact sheet
7 on Bonneville.

8 So, Mr. Roach, you agree with me that
9 Bonneville is a non-public utility in the
10 United States?

11 R. Yes.

12 Q.7 It is part of the Western Interconnection,
13 the WECC Interconnection?

14 R. Yes.

15 Q.8 It is synchronized with all other systems
16 in this interconnection?

17 R. Yes.

18 Q.9 It covers the states of Washington and
19 Oregon?

20 R. That sounds right, yes.

21 Q.10 And under this profile that I just handed
22 to you and under the first heading
23 « Profile », we see that Bonneville BPA
24 Service Territory and I'm on the second
25 paragraph:

1 *« BPA also operates*
2 *and maintains about*
3 *three fourths of high*
4 *voltage transmission*
5 *in its service*
6 *territory. BPA*
7 *service territory*
8 *includes Idaho,*
9 *Oregon, Washington,*
10 *Western Montana and*
11 *small parts of Eastern*
12 *Montana, California,*
13 *Nevada, Utah and*
14 *Wyoming. »*

15 Does this correspond to your understanding
16 of BPA's service?

17 R. Yes.

18 Q.11 Okay. And under the heading
19 *« Customers », at the bottom of the first*
20 column, we see that there is a total of
21 147 customers, 168 marketers and... no,
22 sorry, 385 transmission customers and
23 utilities, 147. Does that also represent
24 your understanding of...

25 R. Yes, I have no reason to challenge these

1 numbers.

2 Q.12 Is it to your knowledge that Bonneville
3 suffers congestion as well?

4 R. I would think they do. You know, they
5 have some of the same issues as Hydro-
6 Québec, for example, if they sometimes
7 have to worry about spilling hydro. So,
8 they do have some congestion in a variety
9 of instances.

10 Q.13 I would like to file this document as B-
11 236 ou 37... B-235, Madame la Greffière?

12 LA GREFFIÈRE :

13 235.

14 Me MARIE-CHRISTINE HIVON :

15 B-235.

16 PIÈCE B-235 :

17 Fact sheet on Bonneville Power Administration.

18 Me MARIE-CHRISTINE HIVON :

19 Alors, ça termine le contre-interrogatoire de
20 monsieur Roach.

21 LE PRÉSIDENT :

22 Merci.

23 R. Thank you.

24 Me ÉRIC DUNBERRY :

25 Monsieur le Président, avec votre permission, nous

1 allons débiter le contre-interrogatoire de monsieur
2 Marshall.

3 LE PRÉSIDENT :

4 Très bien.

5 CONTRE-INTERROGÉS PAR Me ÉRIC DUNBERRY :

6 Q.14 So, Mr. Marshall, good morning. For
7 purposes of your cross-examination, I
8 would invite you to take a copy of your
9 PowerPoint presentation, a copy of your
10 report. I am using the report with
11 revision marks that was produced on
12 September 28th. So, to simplify
13 references to pages and paragraphs, I
14 would invite you to take the one with the
15 revision marks on the right side in the
16 bubbles on the right side. You will
17 recognize your report so we can see the
18 changes that were made.

19 And I would also ask you to take a copy of
20 Mr. Cormier's presentation as well as a
21 copy of Mr. St-Jean's PowerPoint
22 presentation. I will not be using them a
23 lot but to some extent at one point.

24 Mme LUCIE GERVAIS :

25 Maître Dunberry, les pièces PowerPoint, est-ce que

1 vous avez les cotes? Ça va être plus facile à
2 trouver dans le lot.

3 Me ÉRIC DUNBERRY :

4 Oui, la présentation de monsieur Marshall, sauf
5 erreur, est C-6-96. La présentation de monsieur
6 Cormier était, sauf erreur, C-6-97. Et la
7 présentation de monsieur St-Jean, C-6-99, je pense.

8 Mme LUCIE GERVAIS :

9 Merci beaucoup.

10 Me ÉRIC DUNBERRY :

11 Monsieur Marshall j'ai ici C-6-96 la présentation
12 PowerPoint mais encore une fois la principale
13 présentation de monsieur St-Jean... pardon, monsieur
14 Marshall. Encore une fois, j'étais connu pour, à
15 l'occasion, utiliser la mauvaise cote. Je pense
16 bien... à plus ou moins un. C'est bien.

17 Alors, Monsieur Viau, nous allons débiter.

18 Q.15 Mr. Marshall, perhaps a number of
19 introductory questions. I would obviously
20 want you to take a copy of your report and
21 refer you to page 1, paragraph 1 under the
22 title *Introduction* where you describe your
23 mandate and I understand that you were
24 engaged by Brookfield to review the Hydro-
25 Québec Phase II evidence with regard to

1 FERC Orders 890, 890A, B, C and D and more
2 specifically consideration was to be given
3 to the proposed changes to Schedules 4 and
4 regarding generator and energy
5 imbalances.

6 I assume this is a fair description of
7 your mandate?

8 R. For this report, yes.

9 Q.16 For this report. Yes. Were you involved
10 in the preparation of Mr. Cormier's
11 PowerPoint presentation that I just
12 referred to as Exhibit C-6-97?

13 R. No.

14 Q.17 Were you involved in the preparation of
15 Mr. St-Jean's PowerPoint presentation to
16 which I referred as being C-6-99?

17 R. No.

18 Q.18 You did not review the tables and the
19 numbers presented by either of these
20 gentlemen?

21 R. I might have seen Mr. Cormier's
22 presentation before it went in. I did not
23 see Mr. St-Jean's presentation until he
24 gave it in evidence here.

25 Q.19 So, were you involved in the preparation

1 of the graphs and tables and numbers
2 contained in Mr. Cormier's presentation?
3 And I may refer...

4 R. I may have been. I worked with Michel
5 Soucy at Brookfield and I asked him to do
6 some analyses. So, some of the
7 information in my report were calculations
8 done by Mr. Soucy that I verified and
9 checked and included in my report. I
10 think some of that data may also appear in
11 Mr. Cormier's report but it was not
12 because I put it there. It was because it
13 worked with Mr. Soucy.

14 Q.20 Now, could you simplify? I was going to
15 ask you as the next question whether
16 you're the sole author of your report. My
17 understanding was that the answer would be
18 yes based on your voir-dire but you are
19 now telling me that Mr. Soucy may have
20 provided you with some of the data or some
21 of the conclusions or some of the tables
22 that we see in your main report?

23 R. I wrote the report and I had... I asked
24 Brookfield for some support and getting
25 data to do some of the analysis.

1 Mr. Soucy carried out that analysis under
2 my direction and I supervised, I checked
3 it and put it in my report.

4 Q.21 Okay.

5 R. He did not write a word in the report. I
6 wrote the report. He did some
7 calculations of some of the data.

8 Q.22 To expedite matters, Monsieur le
9 Président, I will simply ask more often
10 than usual, to proceed by way of
11 undertakings which may well simplify
12 matters.

13 So, Mr. Marshall, could you simply, by way
14 of undertaking, provide us with a
15 description of the information that you
16 received from Mr. Soucy on which you
17 relied for purposes of your report?

18 R. Essentially, Appendix A and Appendix C.

19 Q.23 Would that be a complete answer?

20 R. I think for this report, yes.

21 Q.24 Okay.

22 R. He got the data off the Hydro-Québec
23 OASIS, it's in Appendix C and he did a
24 first draft of Appendix A and then I
25 adjusted it and modified it and changed it

1 into its final form.

2 Q.25 So, did you personally analyze the data
3 from Brookfield or you simply reviewed the
4 results prepared by Mr. Soucy?

5 R. No, I looked at the data. I went through
6 all the data provided to me and checked
7 that it satisfied my purpose.

8 Q.26 Again as for other witnesses, Mr.
9 Marshall, I would like you to provide with
10 a list of the documents that you have
11 reviewed and relied upon for purposes of
12 your report and, more specifically, I
13 would ask you to confirm whether you were
14 provided with a copy, translated copy or
15 the original French copy of HQT-1,
16 document 1, HQT-9, documents 1, 2, 3, 4
17 and 4.1, HQT-10, documents 1, 2, 3, 4, 5
18 and 6 and HQT-29, documents 1, 2, 3, 6 and
19 8. So, that would be a first undertaking.

20 ENGAGEMENT #16 :

21 Provide the list of documents reviewed and relied
22 upon by Mr. Marshall for purposes of his report and
23 confirm if he was provided with a translated copy of
24 documents HQT-1, document 1; HQT-9, documents 1, 2,
25 3, 4 and 4.1; HQT-10, documents 1, 2, 3, 4, 5 and 6;

1 and HQT-29, documents 1, 2, 3, 6 and 8.

2 Me PAULE HAMELIN :

3 Monsieur le Président, ce serait peut-être plus
4 facile parce que je sais qu'on ne veut pas perdre
5 trop de temps, mais de demander à monsieur Marshall
6 la documentation qu'il a revue parce que ça implique
7 un travail considérable de fournir des engagements
8 après. J'aimerais ça qu'on puisse finir l'ensemble.
9 Et s'il n'est pas en mesure de répondre, bien il va
10 l'indiquer et c'est peut-être pour éviter d'avoir
11 justement à prendre un engagement qui peut être long
12 comme exercice.

13 Alors, peut-être, s'il peut nous fournir
14 la réponse. S'il ne peut pas, bien, à ce moment-là,
15 on prendra l'engagement de vérifier.

16 Me ÉRIC DUNBERRY :

17 Monsieur le Président, je pense que le temps de cour
18 est précieux, le temps d'engagements peut se gérer
19 plus facilement.

20 Alors, j'ai bien entendu la Régie hier
21 lorsqu'elle nous demandait de faire de façon
22 efficace progresser les choses. Monsieur Marshall
23 a peut-être une bonne mémoire pour se rappeler de la
24 majorité ou non des documents qu'il aurait ou non
25 consultés mais par voie d'engagement ça lui permet

1 de vérifier et par voie d'une simple réponse de nous
2 confirmer par voie d'envoi d'une liste s'il a oui ou
3 non été en possession des documents dont je viens de
4 parler.

5 Ça me paraît beaucoup plus efficace et
6 quand je l'ai fait autrement, le procureur de
7 Brookfield a trouvé que c'était lourd. Je le fais
8 différemment cette fois-ci et on pose l'objection
9 que c'est peut-être encore trop lourd parce que ça
10 implique du travail hors du temps de la Cour.

11 Monsieur le Président, il semble qu'il n'y
12 a aucune bonne façon de faire cette chose.

13 LE PRÉSIDENT :

14 Maître Hamelin.

15 Me PAULE HAMELIN :

16 En fait, peut-être juste si c'était possible de
17 demander uniquement s'il a vérifié les documents
18 dont il parle parce que sa question était beaucoup
19 plus large que ça, l'ensemble de la documentation
20 qu'il a vérifiée.

21 On a vu que dans le voir-dire il y a
22 beaucoup, beaucoup de documentations. Alors,
23 c'était juste pour éviter d'avoir à réitérer 890-A,
24 B, C, et caetera. C'est cet aspect-là.

25 Si on veut nous demander est-ce que

1 spécifiquement il a vérifié telle, telle, telle
2 choses, je trouve que ça, oui, effectivement c'est
3 plus efficace. C'était pour éviter d'avoir à faire
4 la longue liste de l'ensemble de la documentation
5 mais je laisse ça à la discrétion de la Régie.

6 LE PRÉSIDENT :

7 Un instant.

8 Alors, la Régie va permettre la question
9 et la prise d'un engagement. Et on peut avancer
10 dans la ligne de questions.

11 Me ÉRIC DUNBERRY :

12 Alors merci, Monsieur le Président. Alors
13 l'engagement a été formulé, je ne voudrais pas le
14 reformuler. Alors, c'est l'engagement qui est
15 souscrit dans les notes.

16 Q.27 Now, Mr. Marshall, were you provided with
17 a copy of the written submissions filed by
18 any of the other interveners?

19 R. Yes.

20 Q.28 Can you identify them for us now or would
21 you like to proceed by way of undertaking?

22 R. Mr. Raphals has provided a translation of
23 Mr. Raphals' evidence. Some of his
24 responses to IRs, which were translated.
25 Mr. Sinclair's reports. So, all of the

1 English reports I got. And all of the IRs
2 from other interveners that were related
3 to the two topics that I'm involved and
4 testifying on in Schedules 4 and 5, and
5 for Attachment K planning processes.

6 My counsel and Brookfield reviewed
7 those and I was, given, appointed to any
8 other ones that were in French and went
9 through and I looked at those. And I can
10 read some rudimentary French to get the
11 gist of those. And where I had issues
12 with it, I got some more explanations.

13 So, I reviewed all of the documents
14 related to my evidence that I presented.

15 Q.29 And that review was completed prior to
16 September 28, 2010?

17 R. All the ones specifically related to my
18 presentation and evidence, yes.

19 Q.30 Thank you. Now, Mr. Marshall, you were
20 there when monsieur Cormier was examined
21 and cross-examined by his counsel and by
22 ourselves. As a preliminary question,
23 you're aware of the fact that Brookfield
24 is an active customer of TransÉnergie with
25 firm reservations and access to markets

1 both in the United States and in Ontario?

2 R. Yes, that's correct.

3 Q.31 And I also understand that you received a
4 copy of decision D-2009-015 which is a
5 decision that was rendered in the context
6 of Phase 1 and which addresses the issue
7 of imbalance pricing as well. You were
8 provided with that?

9 R. Yes. I was provided with that decision
10 way back in March of 2009.

11 Q.32 In reviewing that decision, you understand
12 that your client, Brookfield, may be
13 subjected to the payment of the prices and
14 penalties that are described in your
15 proposal and Hydro-Québec's proposal and
16 TransÉnergie's proposal?

17 R. That's my understanding.

18 Q.33 Now, in your report, from page 5 to 8, you
19 were asked to conduct certain reviews of
20 historical data, from page 5 to 8, and you
21 have tables as well, and revised tables,
22 table 1 on page 6 and table 2 on page 8,
23 and those were adjusted with additional
24 revisions further down the hearing
25 process. That historical data was used to

1 illustrate the application of your
2 proposed formula as well as TransÉnergie's
3 proposed formula. That data was provided
4 to you by monsieur Soucy, as you testified
5 earlier, is that possible?

6 R. That's correct. And it's detailed in
7 Appendix A, the actual calculations and
8 all of the data and how the values are
9 derived.

10 Q.34 Now, you saw as well, monsieur St-Jean
11 made his presentation and you saw - and
12 may I ask you to take a copy of his
13 presentation - you saw certain graphs
14 starting on page, I would say, 9, 10, 11
15 and 12.

16 Now, we all saw when monsieur St-Jean
17 made his presentation, we all saw that
18 Brookfield did cause imbalances over these
19 years. We see the graphs, they were
20 presented. You realize that Brookfield
21 has caused imbalances over the years, over
22 those years at least?

23 R. As I said before, I did not see this
24 presentation until Mr. St-Jean presented
25 it in April, last month. So, other than

1 being aware that any transmission customer
2 on point-to-point service that injects
3 into a power system causes imbalances from
4 time to time as a matter of course, okay,
5 as a general understanding of the
6 industry, I accept that. I accept
7 Brookfield would have caused some
8 imbalances. But I did not see any of this
9 information or was not given any
10 information related to this prior to
11 seeing it from Mr. St-Jean.

12 Q.35 So, if we go on pages 4 and 5 of that
13 PowerPoint presentation - and I understand
14 the comment you made that you saw this for
15 the first time as we did - on pages 4 and
16 5 we see - and we'll come back to these
17 with monsieur St-Jean later but - we see
18 that there are imbalances in 2009 and
19 there are imbalances in 2010.

20 My question to you is whether - and I
21 guess the answer is no, but I just want to
22 confirm that - I guess to the question
23 whether you were provided with
24 Brookfield's actual data that supports
25 these graphs on pages 4 and 5, you were

1 not...

2 R. No.

3 Q.36 No.

4 R. I did not have that data.

5 Q.37 So, you did not receive that data to apply
6 your proposed formula and see or assess
7 the magnitude of the prices and penalties
8 that your client may have been, you know,
9 obligated to pay had your pricing formula
10 been retained for those years, for
11 instance? You did not run programs with
12 that actual data to see the kinds of
13 prices and penalties that your clients
14 would have been asked to pay had your
15 formula been in effect during these years?

16 R. No, I was not asked to do that analysis
17 and nor do I think it's necessarily
18 relevant. My undertaking, engagement, was
19 to look at Hydro-Québec's proposal, look
20 at the Régie's decision from Phase 1 and
21 to come up with a proposed method of
22 achieving a fair, reasonable imbalance
23 proposal that would be based on the FERC
24 Orders and meet the Régie's Order for all
25 customers.

1 So, it wasn't personally for
2 Brookfield, it's for all customers in the
3 system as a reasonable imbalance proposal.
4 Q.38 So, on page 10 of your report you make
5 statements about the fact that Hydro-
6 Québec's formula would lead to windfall
7 gains. And we see this in the first large
8 paragraph. It is one of your contentions,
9 Mr. Marshall, that the application of
10 TransÉnergie's proposed formula would lead
11 to windfall gains, is that fair?
12 R. Yes.
13 Q.39 Now, while you comment on Hydro-Québec's
14 formula and the gains it may generate, I
15 understand that you had no interest to
16 determine, using Brookfield's actual data,
17 the kinds of savings that your clients
18 would make using your formula instead of
19 using Hydro-Québec's formula? You did not
20 ask for any data from your clients to
21 assess the kinds of savings that your
22 clients would make with your formula, but
23 you focused on the gains that Hydro-
24 Québec's proposal would generate, is that
25 correct?

1 R. I did not do any analysis of the impact on
2 Brookfield. And the issue is not
3 necessarily the gains that Hydro-Québec
4 would gain, although I think their
5 proposal does have significant gains for
6 Hydro-Québec companies, it was simply to
7 analyze what it was relative to what I
8 deemed to be a fair and reasonable
9 proposal.

10 Q.40 Do you know whether your clients used your
11 formula to run their own personal analysis
12 of the kinds of savings they would
13 generate using your formula and Mr. St-
14 Jean's data?

15 R. I'm not aware of any analysis Brookfield
16 has done to that extent.

17 Q.41 I would like now to move to page 2 of your
18 report where there is a general
19 description of the relevant provisions in
20 the FERC Order 890. Now, on page 2, at
21 the bottom of page 2 there's a paragraph
22 which starts with the word « *While* »:

23 « *While FERC does not*
24 *specifically include*
25 *opportunity costs or*

1 *the use of market*
2 *proxy pricing in its*
3 *pro forma definition*
4 *of incremental cost,*
5 *it is prepared to*
6 *consider their use on*
7 *a case-by-case*
8 *basis. »*

9 And then you quote the extract that
10 supports that statement. And after the
11 quote, on page 3, you conclude with the
12 following:

13 « *This allowed use of*
14 *a market proxy price*
15 *and opportunity cost*
16 *is important to a*
17 *Hydro-dominated market*
18 *like Quebec, that both*
19 *exports and imports*
20 *power to adjacent*
21 *markets. If it was*
22 *not allowed, the*
23 *incremental cost of*
24 *the last 10 megawatts*
25 *in Quebec, based on*

1 the pro forma
2 definition, would
3 often be zero, as
4 there are no fuel cost
5 hydrates or start-up
6 costs to consider.
7 This is not reasonable
8 as an incremental cost
9 of zero does not
10 reflect the
11 opportunity value of
12 the balancing energy.
13 It would encourage
14 leaning on the system
15 which is counter to
16 FERC's objectives to
17 reduce opportunities
18 for undue
19 discrimination. »

20 I assume you agree with that statement in
21 your report, Mr. Marshall?

22 R. Yes, I do. And the issue of reducing
23 opportunities for undue discrimination is
24 that the balancing proposal needs to be
25 just and reasonable, fair and reasonable,

1 for the transmission provider, for the
2 service provider of the imbalance services
3 and for the transmission customers. So,
4 it's about a fair and reasonable proposal
5 that provides for that balance for all
6 parties in the market.

7 Q.42 So, you agree that the use of market
8 prices, market proxy prices, as well as
9 the use of the notion of opportunity cost,
10 is appropriate for purposes of imbalance
11 pricing?

12 R. In Quebec, I believe it's the only way
13 that you could come to a fair price.

14 Q.43 In a thermal-dominated market, the
15 incremental cost incurred by the supplier
16 of imbalance service would be directly
17 related I guess to the fuel, the cost of
18 fuel, is that a fact?

19 R. It's the cost of fuel, but FERC also
20 allows for some portion of start-up costs,
21 commitment costs, incremental maintenance
22 costs. So, it's basically what are the
23 incremental costs of providing that last
24 10 megawatts of dispatch.

25 Q.44 And in the case of Quebec and in the case

1 where you have a generator in a dominated
2 hydro production, the absence of fuel
3 costs, as you say, the absence of fuel
4 costs, of start-up costs, hydrates, would
5 lead to an incremental cost of zero which,
6 as you say, would be inappropriate or
7 unreasonable for purposes of establishing
8 imbalance charges?

9 R. Yes, a cost of zero is inappropriate. It
10 doesn't reflect the opportunity cost. I
11 mean our proposal is to look at what is
12 the value of the last 10 megawatts that
13 Hydro-Québec decides to dispatch. And
14 it's Hydro-Québec, using all of its
15 resources, that decides which market it
16 sells into, which market it buys from.
17 And our proposal gets to the value of that
18 last 10 megawatts. So, it's essentially
19 the deemed opportunity value that Hydro-
20 Québec has chosen.

21 Q.45 And you say it's unreasonable, and I'm
22 looking at the last line here, it would be
23 unreasonable because it wouldn't reflect,
24 and I quote you:

25 « *The opportunity*

1 *value of the balancing*
2 *energy. »*

3 Is that correct? The opportunity value of
4 the balancing energy.

5 R. That's correct.

6 Q.46 Now, in your PowerPoint presentation you
7 -on page 4 - you indicate, last bullet,
8 you indicate that the:

9 *« Use of market proxy*
10 *costs must represent a*
11 *valid alternative to*
12 *the incremental cost*
13 *calculation. »*

14 You, I guess, still agree with that?

15 R. Yes. That's in my evidence on page 3,
16 right at the bottom of the FERC quote that
17 you just referenced.

18 Q.47 Now, Mr. Marshall, you're aware that in
19 Quebec there is no spot or short-term
20 energy market where competing demands and
21 offers for balancing energies are made,
22 right?

23 R. Yes, that's correct. I think that's why
24 the Régie ruled to use markets...
25 adjacent, the pricing in adjacent markets.

1 Q.48 And that the incremental cost, as you
2 assess it, is zero because the last 10
3 megawatts in Quebec is produced by water
4 in any event, that's correct?

5 R. It usually is produced by water, it's not
6 always produced by water. But when it's
7 produced by water, the incremental cost
8 would be near zero. It wouldn't be zero
9 because there are water charges that
10 Hydro-Québec have to pay to the
11 government. So, there would be some costs
12 associated with the use of that water and
13 whatever, but the price would be near
14 zero.

15 Q.49 Near zero.

16 R. Yes.

17 Q.50 And again, obviously, there's no market
18 for water, it's not like fuel, I mean
19 there's no market for water in Quebec,
20 there's no value associated with water in
21 that context of a market?

22 R. Correct.

23 Q.51 Now, on page 2 of your report, same
24 paragraph, you end that by saying that:

25 « *The wrong approach*

1 *would encourage*
2 *the... »*

3 The wrong approach as you describe it.

4 « ... *would encourage*
5 *leaning on the*
6 *system. »*

7 Do you agree with me that imbalance
8 pricing that does not, and I use your
9 word... well, that does not discourage or
10 that does not eliminate - that was not a
11 good choice of word - but that does not
12 eliminate leaning on the system would not
13 comply with FERC principles?

14 Me PAULE HAMELIN :

15 Je vais... où vous voyez, Maître Dunberry,
16 « éliminer » dans ses références?

17 Me ÉRIC DUNBERRY :

18 I was trying to find a better word, but I can
19 rephrase again.

20 Me PAULE HAMELIN :

21 Parce qu'on va avoir un débat sur... s'assurer que
22 ça n'encourage pas l'arbitrage, mais on va avoir un
23 véritable débat si vous dites que ça doit éliminer
24 l'arbitrage.

25 Me ÉRIC DUNBERRY :

1 Q.52 So, Mr. Marshall, would you agree with me
2 that an imbalance pricing formula that
3 encourages leaning on the system would not
4 comply with FERC's objectives?

5 9H45

6 R. I think the FERC... arbitrage is not
7 really an issue to FERC. And actually in
8 all of the FERC Orders and the thousands
9 of pages, the word « arbitrage » appears
10 only twice. And in all of the Orders the
11 word « leaning » only appears seven times.

12 The issue is, it's to provide an
13 incentive for transmission customers to
14 provide balanced schedules and to stay
15 within their balanced schedules. And the
16 position of FERC taken on that is that the
17 plus or minus 10% and the plus or minus
18 25% is a sufficient penalty to encourage
19 accurate scheduling. And that they not
20 put in deliberate generic penalty clauses
21 in the Tariff.

22 Q.53 I'm now at page 1 of your report. I'll
23 just continue with that line of questions
24 using the quote that you have at page 1 of
25 your report. We see that you have

1 reproduced paragraph 635 of FERC Order 890
2 and the second principle that FERC is
3 advancing for its imbalance provisions is
4 that the charge must provide an incentive
5 for accurate scheduling.

6 Would you agree with me that an
7 imbalance pricing formula that does not
8 provide an incentive for accurate
9 scheduling would not comply with FERC's
10 principle?

11 R. Yes, I think the objective is clear and
12 FERC is following principles and it's
13 doing it in setting up the whole imbalance
14 pricing mechanism. It's to provide that
15 incentive. So, that is one of the
16 principles that the proposal is to make.

17 Q.54 So, the Régie, this Régie should actually
18 reject a proposal that does not provide an
19 incentive for accurate scheduling as it
20 would not comply with, I guess, the
21 Régie's and FERC's principles in the sense
22 that it has, as an objective, to provide
23 for accurate scheduling. You would agree
24 with that dismissal of a formula which do
25 not provide incentive for accurate

1 scheduling?

2 I assume you are, but I just want to
3 make sure.

4 R. But I think you have to look at all three
5 of the principles in context that the
6 proposal that the Régie has to make a
7 decision on, has to be based on
8 incremental costs. So, it has to be a
9 fair and reasonable proposal and that
10 those costs have to be fair and reasonable
11 costs.

12 And then, in addition to that, there
13 should be some provision, adjustment of
14 those costs to provide for an incentive
15 for accurate scheduling.

16 So, it's the combination of all the
17 principles that have to be met. You can't
18 isolate one and say that's the only
19 principle.

20 Q.55 Now, where does FERC say that, that these
21 principles are to be looked as a
22 combination and as long as you meet the
23 three principles in a combined fashion as
24 opposed to meeting them in a separate
25 fashion, where does it say in FERC's Order

1 that these principles do not... each have
2 to be met?

3 R. Well, I'd say right in that paragraph, it
4 doesn't say number 1, number 2 or number
5 3. It says number 1, number 2 and number
6 3. So, it's the three, and, have to be
7 met. Not one at a time.

8 Q.56 Okay. So, the three have to be met. So,
9 the second principle has to be met, right?

10 R. Yes.

11 Q.57 Okay. So, I'm asking you, if the
12 imbalance pricing proposed to the Régie
13 does not provide an incentive for accurate
14 scheduling, would you agree with me that
15 this proposed pricing formula would not
16 meet FERC's second objective, second
17 principle?

18 R. It wouldn't meet the second principle, but
19 it may not meet the first either. So, it
20 has to meet all of them collectively.

21 Q.58 Okay. Now, if we move to the following
22 page of your report, you take the position
23 that an incremental cost of zero would be
24 unreasonable because it would encourage
25 leaning on the system which is counter to

1 FERC's objective to reduce opportunity for
2 undue discrimination.

3 So, will you agree with me again,
4 here again, that if the pricing proposal
5 made by someone to the Régie, does
6 encourage leaning on the system, it would
7 be counter to FERC's objectives and,
8 therefore, should be rejected by the
9 Régie?

10 R. Again, if the proposal encourages leaning
11 and doesn't provide a fair and reasonable
12 price based on incremental costs, then it
13 should be rejected. But it's the
14 combination of the principles that have to
15 be adhered to.

16 So, there is a balancing act between
17 meeting anyone of those objectives. If
18 you single out each objective, then there
19 are different alternatives you could use.
20 You have to meet all three collectively.

21 Q.59 Okay. But you have to meet all three
22 individually and all three collectively?

23 R. Yes.

24 Q.60 Yes. Okay. I'd like now to refer you to
25 Mr. Clermont's PowerPoint presentation.

1 Just a couple of questions on that. That
2 was his presentation. I should have
3 mentioned it earlier, I apologize. It's
4 the PowerPoint presentation made by Mr.
5 Sylvain Clermont back in our own evidence
6 in chief.

7 R. I think I might have one in here
8 somewhere.

9 Q.61 I believe we may have additional copies
10 for you. It's Exhibit number HQT-31,
11 Monsieur le Président... 42? 31, HQT-31.

12 R. 42.

13 Q.62 Okay. Well, I'm 10 points off on this
14 one, Mr. Viau. I'm really in the
15 Galapagos in this one. 40.2.

16 LE PRÉSIDENT :

17 Est-ce qu'on a la pièce B, le numéro de la pièce?

18 R. I have it.

19 Me ÉRIC DUNBERRY :

20 Il doit y avoir une raison historique pour ça.

21 LE PRÉSIDENT :

22 C'est l'audience de quelle journée?

23 Me ÉRIC DUNBERRY :

24 Du 18 octobre. Vous allez reconnaître la
25 présentation de monsieur Clermont. 7 février,

1 Monsieur le Président, plus ou moins un jour peut-
2 être. B-180? Oui, voilà, B-180. Alors, je
3 m'excuse de ne pas avoir eu ces informations-là dès
4 le départ.

5 Q.63 So, Mr. Marshall, on pages 6 and 7 of that
6 PowerPoint presentation, and I may
7 actually be speaking to the engineer, to
8 the professional engineer on this one, so
9 Mr. Clermont - and I'm using this again as
10 a reference document and if you feel
11 comfortable not using it, that is possible
12 as well - Mr. Clermont here on that page
13 made a number of comments for point C
14 concerning the resources available to
15 supply the imbalance services. So, the
16 question was here with respect to the
17 kinds of resources that you need to have,
18 to supply the imbalance service.

19 The first point was that these
20 resources have to be within TransÉnergie's
21 balancing area. Would you agree with
22 that?

23 R. Yes.

24 Q.64 The second point is that those resources
25 have to be subjected to this regulation

1 system, frequency and capacity regulation
2 system. Are you familiar with that
3 system?

4 R. Yes, usually referred to as AGC, automatic
5 generation control.

6 Q.65 Exactly. So, that again would be a
7 requirement?

8 R. Not necessarily. There are two types of
9 requirements for balancing services and
10 it's... the balancing has to occur across
11 the hour. So, there is frequency control
12 AGC which is required in order to keep the
13 system balanced instantaneously within
14 seconds.

15 And then, in addition, you can have
16 load following which allows you a change
17 in dispatch across the hour and those
18 resources do not have to be on automatic
19 generation control. They are simply given
20 instructions to dispatch and ramp their
21 output up or down across the hour.

22 Q.66 But the AGC system is operational, has to
23 be operational?

24 R. AGC is always operational.

25 Q.67 Okay. That was my question, sorry it

1 wasn't clear.

2 The third point is that you have to
3 enjoy a sufficient generation capacity to
4 absorb these imbalances on a continuous
5 basis.

6 R. That's correct.

7 Q.68 And these resources have to be
8 synchronized as well? I assume that's
9 correct?

10 R. Yes.

11 Q.69 Okay. Now, let's go with point number D.
12 It says here that:

13 « *The balancing*
14 *services have to be*
15 *continuous,*
16 *instantaneous and*
17 *reliable,*
18 *notwithstanding*
19 *whether the imbalance*
20 *is accidental or*
21 *intentional. »*

22 Would you also agree with that?

23 R. Yes.

24 Q.70 That the supply of that service has to be
25 competent and able to supply that service?

1 R. Yes.

2 Q.71 And that the measures are designed to have
3 a deterrent effect with the objective of
4 eliminating arbitrage opportunities?
5 Would you also agree with that statement?

6 R. No, that's an added comment by Hydro-
7 Québec. As I said, arbitrage is... the
8 word only appears twice in all of the FERC
9 Orders. It is simply... there should be
10 some incentive to provide for accurate
11 scheduling.

12 Q.72 Now, you said you are as well familiar
13 with our OATT during your voir-dire, Mr.
14 Marshall. Is that fair?

15 R. Yes.

16 Q.73 If you look at the next page 7 of Mr.
17 Clermont's presentation, would you also
18 agree with me that, at this current time,
19 in Quebec, there is only one imbalance
20 service supplier competent and able to
21 supply that service to the clients on a
22 continuous real-time basis as we've just
23 discussed?

24 R. Actually, in my evidence, I said that
25 Hydro-Québec Production is the major

1 supplier. Certainly, they are capable of
2 providing all of the service. But if the
3 Régie saw fit to implement a balancing
4 market in Quebec, there are other
5 suppliers that could contribute to it,
6 whether it would be Brookfield or
7 Newfoundland Power or some of the Alcan
8 resources, there are other resources in
9 Quebec that could contribute, but there
10 are no other resources in Quebec that
11 could do it all by themselves. They could
12 only contribute a part of it whereas
13 Hydro-Québec Production has sufficient
14 resources to provide it from the one
15 entity.

16 Q.74 Okay. I think you answered my question
17 during the second part of your answer.
18 But again, you refer to something in the
19 future as you say in your report. You're
20 suggesting the creation of a balancing
21 market, but as we speak today, would you
22 agree that not only is there only one
23 major but there is only one that can
24 assume the service as we expected for the
25 absorption of all... correction of all

1 imbalances in real time at this moment in
2 time?

3 R. Under the current structure in Quebec and
4 the current arrangement with HQT, there is
5 only HQ Production that provides all
6 services, but there are other resources
7 that could contribute. It's just they're
8 not contracted to contribute. So, if you
9 ask me the question under the current
10 arrangement and the obligations, there is
11 only one, I would say yes. It's Hydro-
12 Québec Production is the only one.

13 Q.75 Okay.

14 R. Currently today.

15 Q.76 Thank you. That is the answer to the
16 second question or the second bullet to
17 Mr. Clermont's presentation, « Le
18 Producteur » being to this date the
19 supplier.

20 Now, referring again to these
21 additional resources. You are aware that
22 article 3 of our current OATT allows the
23 clientele to either self-supply or
24 contract to third parties for the supply
25 of that imbalance service. That is an

1 option available under our current Section
2 3. You're aware of that fact?

3 R. Yes, that's a standard clause in the *pro*
4 *forma* and all tariffs, yes.

5 Q.77 To your knowledge, has any client of
6 TransÉnergie opted to self-supply or
7 contract to third parties?

8 R. Not that I'm aware of.

9 Q.78 On page 9 of your report, going back to
10 your report, you make the following
11 statement. It's a rather long paragraph.
12 It's the fifth paragraph, it starts with
13 « *This line of argument has a thread of*
14 *reason* ».

15 So, you're responding to Mr. Orans'
16 critique of your proposal and you say the
17 following:

18 « *This line of*
19 *argument has a thread*
20 *of reason if one*
21 *accepts that HQT and*
22 *HQP - Production - are*
23 *independent entities*
24 *and the contract*
25 *between them for*

1 *provision of balancing*
2 *services was obtained*
3 *through an open*
4 *competitive process*
5 *and approved by the*
6 *regulator. But such*
7 *is not the case. HQT*
8 *and HQP are affiliated*
9 *divisions of Hydro-*
10 *Québec and the*
11 *contract for provision*
12 *of balancing services*
13 *is a regulated*
14 *obligation of Hydro-*
15 *Québec under its Open*
16 *Access Transmission*
17 *Tariff which is the*
18 *subject of this*
19 *hearing. »*

20 And I will be questioning you on the last
21 part of that paragraph to start with. You
22 say that:

23 *« Once the Régie has*
24 *determined a pricing*
25 *formula for balancing*

1 energy, then HQT will
2 administer it and pass
3 on the cost and
4 revenues to HQP.
5 There will be no under
6 collection, no
7 violation of rate
8 principles and no need
9 for HQT to take a
10 market position. »

11 Now, as the first question, now there will
12 be a few about this paragraph, but as a
13 first question, the rate principles to
14 which you refer in this paragraph refers,
15 I believe, to the principles that are
16 identified in the first sub-section two
17 paragraphs or three paragraphs above where
18 you say:

19 « 1) the pricing terms
20 in the WKM proposal
21 deviate from the
22 imbalance offer from
23 HQP which raises the
24 possibility of under
25 collection, a

1 *violation of cost*
2 *(causation) and user*
3 *pay (principles). »*

4 So, the rate principles to which you refer
5 in this subsequent paragraph are the two
6 principles that are defined here as cost
7 causation and user pay, is that correct?

8 R. Yes.

9 Q.79 Now, do I read your report correctly when
10 I say that, if the Régie were to accept
11 your proposal, it is your belief that
12 these principles, the user pay principle
13 and the cost causation principle would be
14 satisfied under your proposal?

15 R. Yes.

16 Q.80 So, I understand or I assume that, from a
17 policy perspective, you agree that these
18 principles are relevant, that it is
19 relevant for imbalance pricing purposes to
20 satisfy these user pay and cost causation
21 principles and that they would be
22 satisfied under your proposal, that these
23 two principles are relevant?

24 R. The argument put out by Dr. Orans is that
25 any differentiation between the Hydro-

1 Québec Production proposed price and a
2 different price causes a revenue
3 requirement shortfall for HQT. And that
4 that, as a revenue requirement shortfall,
5 comes back to the Régie and has to be
6 picked up through the revenue requirement
7 of HQT.

8 My point is that the objective and
9 the obligation on the Régie in the law is
10 to fix and modify the rates and conditions
11 for transmission provision in a fair and
12 reasonable manner. And that, in the
13 Régie's Order from Phase 1 to use the
14 pricing on the neighbouring markets, that
15 that's an adequate price, an adequate
16 compensation to Hydro-Québec Production.
17 That the Régie decides on a pricing
18 formula that it deems to be fair and
19 reasonable and puts that pricing formula
20 onto Hydro-Québec... Transmission in order
21 to implement, then, there is no revenue
22 shortfall. There is no issue with the
23 rate principles raised by Dr. Orans. They
24 are all fulfilled.

25 Q.81 Okay. But that was just my point, Mr.

1 Marshall. I just want to make sure. That
2 was a simple introductory question because
3 I just want to make sure there is no
4 ambiguity.

5 You agree that the user pay principle
6 if a valid principle to be respected and
7 complied with for purposes of balancing or
8 a tariff for purposes of establishing a
9 tariff for imbalance service.

10 R. I agree that the user pay principle, I
11 think, is valid in all rate settings.

12 10H05

13 Q.82 Okay. Same answer for the cost causation
14 principle, that it's a relevant principle
15 for purposes of a Tariff or imbalance
16 pricing?

17 R. Generally, yes, for all rates and tariffs,
18 the entity that causes the imbalance pays
19 for the cost of fixing the imbalance.

20 Q.83 Okay. And you say at the end of the
21 paragraph that there would be no need,
22 under your proposal, for HQT to take a
23 market position. So, I assume again that
24 from a policy perspective, you agree that
25 HQT TransÉnergie should not have to take

1 a market position to mitigate its
2 financial position, for instance. Do you
3 agree with that notion?

4 R. Yes, I mean, the market position is if
5 they have to take the proposal from HQT
6 and they have to take it, and yet the
7 Régie rules differently, then that
8 differential cost becomes a concern to
9 HQT.

10 Q.84 But from a policy perspective again, you
11 are militating in favour of a situation
12 where HQT would not have to take market
13 positions to mitigate its financial
14 position. That is something you say would
15 not happen with your proposal?

16 R. The transmission provider should not be a
17 player in the market. The transmission
18 provider's obligation is to provide open
19 non-discriminatory transmission access;
20 it's not to be a player in the market.

21 Q.85 Now, you say, and you state that, under
22 your approach, there would be no under
23 collection, is that correct? That there
24 would be no under collection. If I read
25 your paragraph properly, you say:

1 *« Once the Régie has*
2 *determined the pricing*
3 *formula, et*
4 *cetera... »*

5 And then you conclude that you say there
6 will be no under collection under your
7 proposal, is that correct?

8 R. There would be no under collection, there
9 would be no over collection. Hydro-Québec
10 TransÉnergie would administer the
11 balancing price according to what the
12 Régie has determined.

13 Q.86 Now, is it fair to say that, according to
14 your proposal, there would be no under
15 collection because the transmission
16 provider, as you define it, is not
17 TransÉnergie? There would be no under
18 collection because the transmission
19 provider is Hydro-Québec Corporation?

20 R. In the eyes of FERC, it is, yes.

21 Q.87 But when you say that under your proposal
22 there would be no under collection, it's
23 because the transmission provider, as you
24 interpret that notion, is Hydro-Québec
25 Corporation. It's not just TransÉnergie,

1 it's the integrated, all divisions
2 included, corporation that you call Hydro-
3 Québec, is that correct?

4 R. In my mind, that is what FERC sees as the
5 transmission provider. Now, the
6 regulatory structure in Quebec may be
7 slightly different and it's up to the
8 Régie to decide a just and reasonable
9 price for the balancing energy and the
10 nature of the contract, deemed or
11 otherwise, between HQT and HQP.

12 Q.88 But your statement that there would be no
13 under collection is because you're
14 considering that the transmission provider
15 is Hydro-Québec Corporation, including all
16 its divisions? That's your basic
17 assumption.

18 R. Well, even under the arrangement where we
19 accept that the transmission provider in
20 Quebec is strictly HQT, I submit that the
21 contract between HQT and HQT to deliver
22 the imbalance services is subject to
23 regulatory approval because it's part of
24 the rates and conditions of providing
25 transmission service. So, it's within the

1 regulatory mandate of the Régie. Once
2 they rule on that contract, then there's
3 no under or over collection.

4 Q.89 We'll come back to this, just so we
5 understand what you're saying. And to do
6 this, maybe it's useful now to go back to
7 page 23 of your PowerPoint presentation.
8 I think that may be a good starting point
9 to understand what you're saying. Page 23
10 of your presentation, Mr. Marshall. Now,
11 you start that page 23 with the following
12 statement:

13 « HQ Corporation is
14 the "Transmission
15 Provider". »

16 So, what you're telling us today is that
17 today in Quebec, HQ Corporation is the
18 transmission provider for purposes of our
19 Tariff. I assume that's what you meant
20 here? Is that correct?

21 R. In my eyes, in my view, HQ Corporation is
22 the transmission provider, because I view
23 it the way FERC does and the way every
24 other jurisdiction in North America does.
25 Now, the legal structure in Quebec may be

1 slightly different, but the obligation on
2 Hydro-Québec to provide open access
3 transmission is on the corporation of
4 Hydro-Québec to do so. And it has chosen
5 that it be regulated through HQT to be the
6 transmission provider and the Régie is
7 empowered in order to regulate the Tariff.
8 So, I say that it's possible for the Régie
9 to... not only is it possible, I say it's
10 their duty to come up with a just, fair
11 and reasonable approach for providing the
12 transmission service, including balancing.

13 Q.90 That's right. And the cornerstone of that
14 analysis is that the transmission provider
15 in Quebec is not TransÉnergie, it's HQ
16 Corporation, that's the basis, the
17 cornerstone of that analysis, right?

18 R. It is in my mind.

19 Q.91 Okay. And you say that following a
20 review, as you did in your report I
21 assume, of FERC Orders and precedents in
22 the United States, is that correct?

23 R. Yes, and in Canada.

24 Q.92 Well, may I ask you to take a copy of your
25 answer to a question, because the Régie

1 had the same question, to be frank about
2 it. It's response from Brookfield to the
3 first Request for Information by the
4 Régie, it's dated June 30, 2009. I
5 believe it's C-6.61. It's the response to
6 question R9.1.

7 R. I got it.

8 Q.93 C-6.33, I apologize. I see this in your
9 presentation on page 22. If you go on
10 page 22 at C-6.33. So, it's C-6.33. And
11 in that response to question 9.1, the
12 Régie asked you the question... the
13 question was in French so I'll read it in
14 French:

15 « Veuillez documenter
16 votre affirmation à
17 l'effet que selon la
18 FERC le "transmission
19 provider" est Hydro-
20 Québec dans son
21 ensemble et non
22 uniquement le
23 Transporteur. »

24 You see that question, Mr. Marshall?

25 R. Yes.

1 Q.94 And if we look at your answer on that
2 page, you refer to a number of quotes from
3 Order 890. The following page, 19 of 22,
4 you refer again to a number of quotes from
5 FERC. At the bottom of page 19, you
6 actually provide a reference to the Energy
7 Policy Act of 1992 in the United States.
8 On page 20 of 22, you refer to more FERC
9 Orders as well as to the Federal Power
10 Act, section 206. And you continue with
11 quotes of Order 888.

12 And at the end of all that analysis,
13 on page 22 of 22, last line of that long
14 answer, very detailed answer, you quote
15 the following:

16 « For these reasons,
17 the transmission
18 provider in the Hydro-
19 Québec OATT is not
20 just HQT, it is the
21 corporate entity
22 Hydro-Québec. »

23 This is very consistent with what you just
24 said, is that correct?

25 R. Yes.

1 Q.95 Okay. Now...

2 Me PAULE HAMELIN :

3 Si vous me permettez, peut-être juste pour être
4 *fair...*

5 Me ÉRIC DUNBERRY :

6 Non.

7 Me PAULE HAMELIN :

8 ... excusez-moi, avec le témoin, juste...

9 Me ÉRIC DUNBERRY :

10 Monsieur le Président, je suis en plein milieu d'un
11 contre-interrogatoire sur un sujet très important,
12 ma consœur intervient avant même... après que la
13 réponse a été donnée, avant que la prochaine
14 question soit posée. Elle pourra faire son
15 réinterrogatoire, Monsieur le Président. Plusieurs
16 fois hier elle a fait ce type d'interventions et on
17 a vu que monsieur Roach à chaque occasion a référé
18 à maître Hamelin comme ayant suggéré, ou à peu près,
19 une réponse en reprenant son texte ou sa
20 proposition. Je ne suggère pas qu'elle allait faire
21 la même chose mais je ne vois pas, vraiment pas, à
22 ce moment-ci, la base pour une intervention de sa
23 part. Elle n'est pas en réinterrogatoire et il n'y
24 a pas eu de question de posée et nous passons au
25 point suivant, Monsieur le Président.

1 Me PAULE HAMELIN :

2 Un, hier c'était hier, aujourd'hui c'est
3 aujourd'hui. Je reviendrai en réinterrogatoire
4 parce que mon collègue a la fâcheuse tendance de
5 référer seulement à des extraits sans nécessairement
6 donner tout le contexte. Alors, je reviendrai en
7 réinterrogatoire là-dessus, Monsieur le Président.

8 Me ÉRIC DUNBERRY :

9 Q.96 So, for purposes of establishing Schedules
10 4 and 5, the Tariff for imbalance pricing,
11 you take the basic position that the
12 transmission service provider is not just
13 TransÉnergie?

14 R. Yes.

15 Q.97 And according to your understanding, this
16 Régie has jurisdiction over Hydro-Québec
17 Corporation for purposes of imbalance
18 tariffs?

19 R. Well, I'm not a lawyer, but in reading the
20 Act of *la Loi* respecting *la Régie de*
21 *l'énergie*, it's very clear that the
22 jurisdiction of the Régie is to fix and
23 modify rates and other conditions for the
24 provision of transmission service and that
25 that service should be fair and

1 reasonable. And that furthermore, the
2 Régie can take on any means that it deems
3 reasonable in order to carry out that
4 function. That's what I read in the law.
5 I think they have the jurisdiction.

6 Q.98 You refer to the law. I'm on page 22 of
7 your PowerPoint presentation. There is a
8 reference to the Quebec law and you quote
9 three elements. Now, did you conduct your
10 own analysis of these two statutes, the
11 Act respecting the Régie and the Hydro-
12 Québec Act, did you perform your own
13 personal analysis and review of these two
14 legislations?

15 R. Yes.

16 Q.99 So, the analysis of the law was done by
17 yourself?

18 R. Yes. And as I say, I'm not a lawyer, I
19 only read the words that are there.

20 Q.100 Do you think FERC has jurisdiction over
21 TransÉnergie?

22 R. No, they do not.

23 Q.101 I would like to go back to your question
24 9.1. I would like to review that question
25 again with you. Do you think that the

1 question should be... actually, don't you
2 think we should remove in your answer...
3 yes, that's right. The first line of 9.1,
4 your answer is:

5 « To understand why
6 FERC would view Hydro-
7 Québec as a
8 transmission
9 provider. »

10 Now, if we remove FERC and we put the
11 Régie and I ask you the question, to
12 understand why the Régie would view Hydro-
13 Québec as the transmission provider, in
14 your mind, would the answer be the same?
15 In other words, it seems that you're
16 answering the question whether FERC would
17 consider Hydro-Québec as the transmission
18 provider. Would your answer be the same
19 if I ask you the question whether the
20 Régie, this Régie, would view Hydro-Québec
21 as the transmission provider or would it
22 view the transmission provider as being
23 TransÉnergie and not the corporation
24 Hydro-Québec? Do you think the Régie's
25 position on this is the same as FERC's

1 position? Was that implied in your
2 answer?

3 R. Well, I think when we look at the
4 question, I stated in my evidence that in
5 FERC's eyes, in FERC's view, the
6 transmission provider is Hydro-Québec.
7 And the Régie asked me a question to
8 explain that. I made that statement:
9 « Please explain why you make that
10 statement. » So, I answered the question
11 from FERC quotes and FERC documents that
12 the transmission provider is more than
13 just the owner of the transmission system
14 and the operator of the transmission
15 system, it is the integrated utility that
16 buys, sells, supplies local load, sells on
17 markets, that does everything. So, I
18 answered that question as asked. Now,
19 you're asking me...

20 Q.102 I'm asking you whether - and that's my
21 understanding of your PowerPoint
22 presentation - my understanding is that
23 you're suggesting that this Régie, this
24 Régie in front of us, should also take the
25 position, in the context of this hearing,

1 that the transmission provider is Hydro-
2 Québec Corporation? That the Régie should
3 arrive at the same conclusion?

4 R. The Régie has to make a decision to rule
5 on the Tariff under the law in Quebec.
6 I'm providing information to them so that
7 they can do it understanding how FERC
8 views the transmission provider and the
9 different aspects of the corporation that
10 provides the transmission services. And
11 I would hope that the Régie understands
12 that and would rule looking at Hydro-
13 Québec as the total transmission provider.
14 But that's for the Régie to decide in the
15 context of their interpretation of the
16 law.

17 Q.103 It's for the Régie to decide, but it is
18 your submission to the Régie?

19 R. My submission is pretty clear, I say that
20 Hydro-Québec corporately has the duty to
21 provide the transmission services,
22 including the balancing, and that the
23 Régie should take that into consideration
24 in making its final decision.

25 Q.104 When you reviewed the Tariff, and we see

1 on page 22 that you actually reviewed
2 Hydro-Québec TransÉnergie Tariffs, and you
3 refer to the definition of transmission
4 provider as Hydro-Québec...

5 R. Where are we now?

6 Q.105 Sorry, page 22.

7 R. In the presentation?

8 Q.106 Yes, yes, I apologize. Yes, you define
9 transmission... well, not you but you
10 refer to section 162 and you define
11 transmission provider as Hydro-Québec when
12 carrying on electric power transmission
13 activities. Did you notice, while
14 reviewing the OATT, that the words
15 « distributor », « generator » and
16 « transmission provider » are three
17 different terms defined separately in our
18 OATT? These are three terms defined
19 separately, did you notice that?

20 R. Yes. Hydro-Québec when carrying on
21 electric power, Hydro-Québec when doing
22 distribution, Hydro-Québec when doing
23 production.

24 Q.107 Did you notice that, in FERC's *pro forma*
25 OATT, there is no reference to the

1 distributor, the generator or the
2 transmission provider; there's only one
3 reference to the transmission provider?
4 R. That's correct.
5 Q.108 That's correct. And is that also fair to
6 say that, in your own province, New
7 Brunswick, in your OATT, there are no
8 three definitions, there's only one. You
9 don't have a separate definition for
10 generator and a separate definition for
11 the distributor, is that correct?
12 R. Correct, it's the transmission provider.
13 Q.109 Yes, okay. Now, did you also notice that
14 in our own legislation and Tariff there is
15 a Part IV which establishes a specific
16 regime of transmission rights and
17 priorities for the service of the native
18 load?
19 R. Yes.
20 Q.110 Yes. And you understood that there's no
21 equivalent in FERC's *pro forma* OATT, is
22 that correct?
23 R. That's correct.
24 Q.111 And going back to your own province, there
25 is no Part IV in your own province, in

- 1 your own OATT?
- 2 R. Correct. In New Brunswick, New Brunswick
3 Power Distribution and Customer Service
4 Corporation take service under Part III,
5 Network Integration Service in order to
6 supply local load, which is the case in
7 most jurisdictions. And that's why Part
8 IV written in the Hydro-Québec Tariff is
9 essentially a cut-and-paste of Part III,
10 but changed for local load as opposed to
11 network customer.
- 12 Q.112 Did you do a comparison, when you say a
13 cut-and-paste?
- 14 R. I haven't done a word-for-word comparison,
15 but you can look at all the sections and
16 see that it lines up pretty well with Part
17 III.
- 18 Q.113 So, you don't think there are major
19 differences between Part III...
- 20 R. There are wording differences.
- 21 Q.114 Wording differences, nothing else, just
22 wording differences, Mr. Marshall? What
23 kind of differences did you notice aside
24 from words or specific translation issues?
- 25 R. I haven't gone through all the detail

1 other than see... you can see that there
2 are some differences when you do a compare
3 between the documents, but my focus in
4 this hearing and looking at it is focusing
5 on point-to-point, as my client is a
6 point-to-point customer. So, my focus has
7 mostly been on the point-to-point aspect
8 of the Hydro-Québec Tariff.

9 Q.115 So, your mandate was not to conduct a
10 comparison between Part III and Part IV
11 for purposes of...

12 R. Correct.

13 Q.116 Okay. Now, I would like to refer you to
14 Schedule C. Schedule C that we've
15 discussed a lot, I would like to show you
16 a provision of Schedule C. And we can use
17 Schedule C-1, it's a provision which has
18 been there for a while now. So, I would
19 like to ask you to take a copy of your
20 Schedule C. If you don't have it, we'll
21 provide a copy of Schedule C, Mr.
22 Marshall. C or C-1, it's the same
23 language.

24 R. Is this on ATC calculations?

25 Q.117 No, it's a definition, you'll see. You'll

1 see. It's not on ATC calculation, it's a
2 concept.

3 LE PRÉSIDENT :

4 Vous référez à la pièce présentement au dossier?

5 Me ÉRIC DUNBERRY :

6 Oui.

7 LE PRÉSIDENT :

8 Si oui, laquelle?

9 Me ÉRIC DUNBERRY :

10 Oui, c'est la pièce... on peut prendre C ou C-1, la
11 plus facile pour vous, Monsieur le Président, C-1
12 peut-être. HQT-4, document 4, c'est l'Annexe C.
13 HQT-4, document 1.

14 Me PAULE HAMELIN :

15 C ou C-1?

16 Me ÉRIC DUNBERRY :

17 Je suis dans C-1 là.

18 Pardon, Monsieur le Président, c'est C.

19 On me fait des suggestions, mais je me perds moi-
20 même dans mes suggestions. C'est C. C'est la pièce
21 C, dans sa version actuelle ou sa version révisée,
22 mais c'est la pièce C. *Attachment C.*

23 Q.118 So, I'm at original sheet number 197.

24 R. 197, okay, I have it.

25 Q.119 The second paragraph. We'll wait for the

1 Board members.

2 LE PRÉSIDENT :

3 Vous pouvez y aller, Maître Dunberry.

4 Me ÉRIC DUNBERRY :

5 Q.120 So, on that page, if you look at the
6 paragraph starting with the word
7 « *Estimated* », okay?

8 « *Estimated transfer*
9 *capability takes*
10 *account essentially of*
11 *constraints relating*
12 *to transmission*
13 *equipment.* »

14 10H29

15 And then we refer to this notion here that
16 we have in Quebec about certain systems
17 being isolated with our system or with the
18 Ontario system and it says:

19 « *For interconnections*
20 *where generating units*
21 *must be isolated on*
22 *the neighbouring*
23 *system, posted*
24 *capability may be*
25 *higher than*

1 *transferable local*
2 *generating capability*
3 *on the neighbouring*
4 *system. Prior*
5 *agreement shall be*
6 *reached with the*
7 *generator operating*
8 *the generating units*
9 *for each reservation*
10 *request for*
11 *transmission service*
12 *over such*
13 *interconnections and*
14 *this at the*
15 *generators'*
16 *discretion. »*

17 Are you familiar with the fact that some
18 of these generating units could be
19 isolated in SMO modes, segregated modes,
20 either with the Quebec system or...

21 R. Yes.

22 Q.121 ... the Ontario system?

23 R. Yes, and not only generating units. Load
24 in New Brunswick can be isolated on the
25 Quebec system in order to increase

1 transfer capacity.

2 Q.122 Okay.

3 R. So, both loads and generators can be
4 switched between systems.

5 Q.123 Okay. And in that context, the consent of
6 the generator has to be obtained, right?

7 R. Yes.

8 Q.124 In this case, it might be Hydro-Québec
9 Production that may or may not consent to
10 these arrangements. Is that correct?

11 R. Yes.

12 Q.125 Okay. So, there are situations where the
13 consent has to be provided by the division
14 Hydro-Québec Production. Do you have the
15 same provision in the New Brunswick OATT?

16 R. This specific provision?

17 Q.126 Yes.

18 R. No, there are no generators in New
19 Brunswick that can be isolated, switched
20 from one system to the other. But there
21 is load in New Brunswick that can be
22 switched over onto Hydro-Québec, the
23 radial load in Madawaska and Eel River
24 areas.

25 So the TTC in actual fact can include

1 that load as a transfer capacity coming
2 from Quebec into New Brunswick, but that
3 is not available as firm. It's reserved
4 essentially as non-firm and not generally
5 made available to the market.

6 Q.127 My point generally was not more on the
7 technical side, it was whether you were
8 aware of the fact that, in some
9 circumstances, for TransÉnergie to be able
10 to carry out certain activities, it has to
11 have obtained a consent from the
12 production unit. You're aware of that?

13 R. I'm aware of that. As a matter of fact,
14 I was involved in the hearing in 2001 when
15 the decision was made and this change was
16 put into the tariff and I objected to it
17 at that time. I thought it was
18 discriminatory. I still think it's
19 discriminatory and TransÉnergie is the
20 transmission provider. They are
21 responsible for reliability.

22 If there is an opportunity to re-
23 dispatch the generator to provide for
24 transmission service, they have that right
25 in the Tariff, they should be able to do

1 it. It shouldn't require approval of the
2 generator.

3 Q.128 I heard you say that this was
4 discriminatory. You're...

5 R. In my view.

6 Q.129 Yes.

7 R. In my view.

8 Q.130 You came to us with that word again in
9 your current report. I'd like to refer
10 you to decision 2009-95 and get your views
11 on something the Régie has said on that
12 point, not on that specific point but on
13 the notion of HQT Corporation.

14 Could you take a look at decision D-
15 2002-95 to which we already referred,
16 Monsieur le Président. It's a fairly
17 thick decision that was rendered in April,
18 2002, a very well known case, 3401-98, D-
19 2002-95.

20 Dans trois ou quatre minutes j'aurai
21 terminé, Monsieur le Président. Alors, on
22 pourra prendre la pause, je vais changer
23 de sujet dans trois ou quatre minutes.

24 I apologize for that delay, Mr.
25 Marshall.

1 Me PAULE HAMELIN :

2 On vient de le prendre sur internet. Alors, je vais
3 lui remettre ma copie à moi, mais elle n'est pas
4 annotée.

5 Me ÉRIC DUNBERRY :

6 C'est à la page 21 et un peu plus loin à la page 36.

7 Q.131 You have a copy, Mr. Marshall?

8 R. Yes.

9 Q.132 I would like to invite you to look at
10 paragraph... well, Section 2, page 21.
11 Monsieur le Président, Monsieur, Madame,
12 vous l'avez.

13 So, I'll read it slowly, Mr.
14 Marshall, so you can follow us with the
15 translation.

16 R. Just a minute, please, I'll get it.

17 Q.133 The topic is *functional separation*. And
18 the Régie said in that decision of
19 principle, because it was...

20 Me PAULE HAMELIN :

21 Encore une fois, je vais vous demander de la lire
22 sans faire des commentaires sur la décision en tant
23 que telle. Alors, lisez l'extrait. Vous n'avez pas
24 besoin de commenter la décision.

25 Me ÉRIC DUNBERRY :

1 Alors, Monsieur le Président, je ne répondrai pas.
2 Je vais simplement lire.

3 Q.134 Alors, Mr. Marshall, the Régie said the
4 following:

5 « *En vertu de la Loi,*
6 *la Régie... »*

7 R. What paragraph?

8 Q.135 First paragraph, page 21 in the French
9 version. It starts with « *En vertu de la*
10 *Loi »*. Alors:

11 « *En vertu de la Loi,*
12 *la Régie réglemente*
13 *une partie seulement*
14 *des activités d'Hydro-*
15 *Québec. En effet, la*
16 *Loi définit le*
17 *Transporteur comme*
18 *étant Hydro-Québec*
19 *dans ses activités de*
20 *transport*
21 *d'électricité et c'est*
22 *pour cette dernière*
23 *que la Régie a*
24 *notamment compétence*
25 *exclusive pour fixer*

1 ou modifier les Tarifs
2 et les conditions
3 auxquels l'électricité
4 est transportée.
5 L'application de la
6 Loi requiert donc,
7 selon la Régie, que
8 les activités d'Hydro-
9 Québec soient séparées
10 et classées selon leur
11 nature entre activités
12 réglementées et non
13 réglementées. La
14 politique énergétique
15 mentionne aussi:
16 Hydro-Québec devra
17 dorénavant distinguer
18 clairement ses
19 activités réglementées
20 et celles qui ne le
21 sont pas. Hydro-
22 Québec n'ayant jamais
23 été réglementée par la
24 Régie en tant
25 qu'entreprise intégrée

1 *d'électricité,*
2 *l'exercice*
3 *d'identification et de*
4 *séparation des*
5 *activités du*
6 *Transporteur est donc*
7 *important, voire*
8 *fondamental, puisqu'il*
9 *détermine dès le début*
10 *de la période de*
11 *réglementation les*
12 *bases d'établissement*
13 *d'un tarif juste et*
14 *raisonnable pour le*
15 *transport et, par la*
16 *suite, pour les tarifs*
17 *du Distributeur. »*

18 Et on pourra continuer à lire. Je vais
19 arriver au paragraphe sur lequel je vais
20 vous poser la question mais la Régie
21 continue par la suite à discuter en se
22 référant à sa décision D-99-120. Elle
23 discute par la suite les buts qui sont
24 pertinents à la page 22, Monsieur
25 Marshall:

1 « La Régie énumère un
2 nombre d'étapes à
3 franchir. La
4 séparation et
5 l'identification des
6 activités réglementées
7 et non réglementées
8 doivent, selon la
9 Régie, se faire en
10 plusieurs étapes,
11 soit:... »

12 Et les étapes apparaissent ici. La
13 première étape:

14 « La séparation
15 fonctionnelle. »

16 Et c'est à ce sujet que je voulais vous
17 référer. Donc, à la page 36, nous allons
18 arriver à la question plus pointue de la
19 séparation fonctionnelle et c'est à la
20 section 2.1.2 sous le titre *Opinion de la*
21 *Régie*. Alors, nous sommes dans la section
22 2.1 *Séparation fonctionnelle*. Et la Régie
23 dit ceci:

24 « La séparation
25 fonctionnelle découle

1 du texte de la Loi.
2 En effet, l'article 2
3 de la Loi définit le
4 Transporteur
5 d'électricité comme
6 étant Hydro-Québec
7 dans ses activités de
8 transport
9 d'électricité. Ce
10 même article définit
11 aussi le Distributeur
12 d'électricité comme
13 étant Hydro-Québec
14 dans ses activités de
15 distribution
16 d'électricité. En
17 conséquence, la Régie
18 considère qu'une
19 séparation
20 fonctionnelle des
21 activités d'Hydro-
22 Québec est un outil
23 essentiel pour assurer
24 la réglementation du
25 Transporteur. La

1 Régie demande au
2 Transporteur de se
3 rapprocher le plus
4 possible du concept
5 d'entreprise autonome,
6 distinct, et de ne
7 conserver à titre de
8 service intégré que
9 les seuls services
10 pour lesquelles des
11 économies d'échelle
12 et/ou des économies de
13 gammes sont possibles.
14 La Régie s'attend à ce
15 que le Transporteur
16 traite aussi les
17 affiliés comme s'ils
18 étaient des tiers. »

19 Et on pourra lire toute cette section-là.

20 Ma question, et je pense vous avoir
21 bien mis en contexte, my question to you,
22 Mr. Marshall, now, is whether you're not
23 suggesting, whether you are or you're not
24 suggesting that for purposes of
25 establishing a tariff for imbalance

1 pricing, are you not suggesting that the
2 Régie should simply ignore the notion of
3 functional separation as it was defined in
4 that decision and consider TransÉnergie
5 not as a transmission provider but Hydro-
6 Québec Corporation as a transmission
7 provider? Are you suggesting that the
8 Régie ignored this functional separation
9 and the notion surrounding it?

10 R. Absolutely not. Functional separation is
11 an important concept not just in Quebec,
12 maybe more formalized here in Quebec, but
13 it is an important issue in all
14 transmission tariffs.

15 And FERC in Order 889 made it very
16 clear about the need for an OASIS and the
17 code of conduct between the transmission
18 operating divisions and the market
19 merchant function divisions of
20 transmission providers, being the
21 integrated utility that does both.

22 So, functional separation is a very
23 important part of FERC's implementation of
24 the tariff, not just here in Quebec.

25 Now, what issue here though that I

1 say is that the provision of the
2 transmission services requires ancillary
3 services to go with it. And the fact that
4 HQT only is the transmission provider
5 without having access to any of those
6 resources to provide those services has to
7 get them somewhere to provide for open,
8 non-discriminatory, comparable
9 transmission access.

10 And my statement was in the eyes of
11 FERC, it's the integrated utility that has
12 the obligation.

13 Now, the issue here is that the
14 interpretation of the law and of the
15 Régie's previous rulings on functional
16 separation, there has to be some balance
17 between how that's carried out and yet the
18 Régie's obligation to ensure that there is
19 a fair and reasonable implementation of a
20 transmission tariff and that that tariff
21 be comparable.

22 And in the eyes of FERC, although
23 FERC doesn't regulate HQT, the Régie does,
24 but in the eyes of FERC, it's Hydro-Québec
25 U.S. that applies to FERC for a power

1 marketing authorization and tells FERC
2 that Hydro-Québec has a comparable tariff
3 that meets all of the requirements. It's
4 through that door that there is the
5 requirement in order to adhere to FERC
6 principles in providing comparable
7 service.

8 Now, I'm not a lawyer and I don't
9 have the total understanding of the
10 nuances of the law in terms of the
11 functional separation here in Quebec, but
12 I simply laid out to the Régie that you do
13 and it's an issue you have to deal with to
14 come up with a fair and reasonable tariff.
15 That's my point.

16 Q.136 Now, I hear what you're saying, Mr.
17 Marshall, but we're not in the United
18 States. We are not in New Brunswick. Is
19 it possible that here in Quebec under our
20 laws and our tariffs, the transmission
21 provider is TransÉnergie?

22 R. Yes, that is the way it appears and that's
23 fine. But as such, TransÉnergie has to
24 get the services necessary to provide
25 transmission service and those services

1 are regulated by this Board.

2 Q.137 So, you're suggesting that this Régie
3 extend its jurisdiction to cover services
4 provided by Hydro-Québec Production?

5 R. The services that are provided by Hydro-
6 Québec Production that are necessary for
7 transmission service, for network
8 integration service, all of the ancillary
9 services are absolutely necessary for
10 point-to-point imbalance services are
11 absolutely necessary. In order to fulfil
12 its mandate to provide non-discriminatory
13 transmission service, those services have
14 to be provided from somewhere and they
15 have to be provided in a just and
16 reasonable manner. And I suggest that
17 it's the duty of this Board to come up
18 with the way it's done.

19 Q.138 So, one of the building blocks in your
20 submission to this Board is that this
21 Régie should in fact regulate Hydro-Québec
22 Production?

23 R. No. They are not going to regulate Hydro-
24 Québec Production. They are simply going
25 to regulate the contract between Hydro-

1 Québec Production and Hydro-Québec
2 TransÉnergie for the provision of
3 balancing services. C'est tout.

4 Me ÉRIC DUNBERRY :

5 Nous pouvons prendre la pause, Monsieur le
6 Président. C'est tout.

7 LE PRÉSIDENT :

8 Très bien. Donc, nous allons prendre la pause
9 jusqu'à 11 h 05.

10 SUSPENSION DE L'AUDIENCE

11 11H09

12 REPRISE DE L'AUDIENCE

13 LE PRÉSIDENT :

14 Alors, reprise de l'audience. Maître Dunberry?

15 Me ÉRIC DUNBERRY :

16 Merci, Monsieur le Président.

17 Q.139 Mr. Marshall, we will now move to your
18 proposal that is introduced in section
19 3.3, page 7.

20 Now, as a preliminary question, would
21 you agree with me that, for purposes of
22 implementing what you are suggesting, the
23 approach you're suggesting, Hydro-Québec
24 would necessarily have to capture and
25 process the information required to

1 determine whether Hydro-Québec, as a
2 whole, because the approach as you suggest
3 it is Hydro-Québec as a whole, is a net
4 importer or a net exporter. Would you
5 agree with that?

6 R. Yes, they already have that information.

7 Q.140 And the implementation of that within
8 TransÉnergie's division would obviously
9 require certain changes and certain
10 investments in time, or at least in
11 resources, to process that information and
12 make the determination whether it's a net
13 importer or a net exporter. There would
14 need to be some implementation issues to
15 be addressed?

16 R. Yes.

17 Q.141 Now, I assume that you did not perform any
18 analysis of the time and/or the resources
19 that would need to be invested in this
20 implementation initiative nor the nature
21 or scope of the changes that it would
22 require within TransÉnergie's division?

23 R. No, I didn't.

24 Q.142 No.

25 R. But I would expect that, you know, they

1 have the capability to do it. We
2 certainly did in New Brunswick at the
3 system operator and were able to take data
4 and do... from the balancing market in New
5 Brunswick and the software to do all that.
6 So, I think Hydro-Québec TransÉnergie is
7 fully capable of carrying out the
8 necessary work to do it.

9 Q.143 So, my question was not whether they are
10 capable or not capable, my question was
11 whether you've looked at the cost, the
12 time, the efforts that would be required
13 for TransÉnergie, given its current
14 processes in place, to implement your
15 proposal. And the answer was no?

16 R. No, I did not.

17 Q.144 Do you think the Régie should consider
18 this as a relevant factor, implementation
19 costs and investments as a relevant factor
20 in reviewing your proposal? Do you think
21 it's a relevant factor?

22 R. I think all costs related to transmission
23 service are a factor that the Régie
24 considers in carrying out all of its
25 functions. So, I think yes, I think the

1 costs of... the costs of implementing a
2 system relative to the, you know, to the
3 potential amount of dollars handled for
4 imbalance over time is small.

5 Q.145 That is a hypothesis because you have not
6 done any research or review?

7 R. It's true, it's just based on my knowledge
8 of power systems and operation.

9 Q.146 Before we enter into the actual mechanics
10 of your proposal, how it actually works,
11 I would like to discuss with you a few
12 notions. My first question, and it's a
13 question of approach I guess, would you
14 say that it is reasonable for a generator
15 of hydroelectricity to try to produce or
16 buy its electricity at the lowest possible
17 cost and market it at the highest possible
18 price? Do you think that's a reasonable
19 concept?

20 R. That's the concept that all generators
21 selling in the marketplace try to do. I
22 don't think it's distinct for Hydro.

23 Q.147 Now, would you also agree with me that a
24 generator with dams and reservoirs and
25 consequently with a capacity to store

1 energy has an ability at least to try to
2 seize market opportunities to buy energy
3 at low prices, store it, and sell that
4 electricity at higher prices. At least
5 that's an objective or a goal. Do you
6 think that's a fair summary of an
7 approach?

8 R. Yes, I think it is. And actually, in my
9 evidence, I can get out the document and
10 show you that they do that as well. If
11 you look at Appendix A, we...

12 Q.148 We'll go there.

13 R. ... show some examples of, you know, what
14 is a lower price when they're selling,
15 what is a higher price, the different
16 prices. So, yes, it's an overall
17 objective.

18 Q.149 Now, you'll agree with me that the level
19 of water in a reservoir has value for that
20 generator? I mean, water is energy stored
21 and that has value for a generator.
22 That's a fairly basic assumption I'm
23 suggesting. Would you agree with that?

24 R. It has the value of the electricity it can
25 produce at some point in time.

1 Q.150 So, you read the Régie's decision and
2 there is in the Régie's decision a notion
3 of fair compensation or just compensation
4 for the imbalance service supplier. Do
5 you recall that?

6 R. Yes, that's correct.

7 Q.151 And I assume that you agree with the
8 Régie's determination that it is one of
9 the objectives to ensure that the
10 imbalance service supplier is justly
11 compensated or compensated justly?

12 R. Absolutely. It should be a fair
13 compensation for the supplier and a fair
14 price for the customer.

15 Q.152 Do you think that just compensation of the
16 imbalance service supplier should
17 recognize its ability, like in a Hydro-
18 dominated market with reservoirs and dams,
19 do you think just compensation should
20 recognize the ability of that generator,
21 which is a supplier of imbalance energy,
22 the ability to store energy and try to
23 seize market opportunities when they come,
24 which may mean importing when prices are
25 low and exporting, selling, when prices

1 are high. Do you think that notion of
2 just compensation should include that
3 ability to store and seize market
4 opportunities?

5 R. Yes, that's what our proposal does.

6 Q.153 Okay. I would like to look at your
7 proposal, and to do this, I found a fairly
8 simple summary in your client's own
9 evidence. It's in the June 19... C-
10 6.30...

11 Me ÉRIC DUNBERRY :

12 Monsieur le Président, C-6.30, sauf erreur.

13 Q.154 It's the June 19, 2009 Summary of Evidence
14 filed by Brookfield. So, we'll show you
15 that document, Mr. Marshall. It's in
16 French. And my understanding is that this
17 document has not been amended so this is
18 your client's position; it was filed.

19 So, if you and I go at page 12, there
20 is a simple summary of your proposal and
21 it reads as follows, and you could put
22 your earsets. So, it says the following:

23 « La formule
24 proposée... »

25 Your formula, Mr. Marshall.

1 *« ... est scindée en*
2 *deux parties reposant*
3 *sur le principe de la*
4 *détermination de prix*
5 *résultant de*
6 *l'interaction entre*
7 *l'offre et la demande.*
8 *Premièrement, pour les*
9 *heures où le Québec*
10 *est un exportateur*
11 *net... »*

12 We'll come back to the notion of net
13 exporter.

14 *« ... la valeur du*
15 *prix proxy Québec sera*
16 *égale au prix le moins*
17 *élevé aux*
18 *interconnexions*
19 *importantes avec les*
20 *marchés de l'Ontario,*
21 *du New York ISO et de*
22 *la Nouvelle-*
23 *Angleterre, ajusté des*
24 *coûts de transport et*
25 *autres frais de*

1 *transaction. »*

2 Is that correct, Mr. Marshall?

3 R. Yes.

4 Q.155 So, when Hydro-Québec is a net exporter,
5 therefore a net seller, the reference
6 price will be based on the lowest-priced
7 market, that's correct?

8 R. No, not quite. The lowest-priced market
9 to which they are exporting.

10 Q.156 You're right, absolutely right. So, with
11 that addition, you're agreeing with me
12 that, when Hydro-Québec is a net seller,
13 they will supply the electricity,
14 according to your proposal, at the lowest-
15 priced market to which it is exporting?

16 R. Yes.

17 Q.157 Okay.

18 R. Because that reflects the last 10
19 megawatts that Hydro-Québec is selling.
20 And the value of the incremental 10
21 megawatts.

22 Q.158 That's what you... we'll come back to the
23 rationale later, but just to make sure we
24 understand how it applies. So, when
25 Hydro-Québec is selling, it is selling at

1 the lowest-priced market. So, I refer to
2 that as selling low, okay?

3 Me PAULE HAMELIN :

4 Je vais m'objecter...

5 R. No, they're selling as high as they can,
6 they're not selling low deliberately, they
7 sell as much as they can into the highest
8 market, but then, if they can't get
9 anymore into that market and they still
10 have surplus energy, they sell it into the
11 next highest market. And then the next
12 highest. So, the last 10 megawatts is at
13 the... into the market with the lower
14 price to which they are selling.

15 Me ÉRIC DUNBERRY :

16 Q.159 But since, according to your approach,
17 this is the point in time where you think
18 it's relevant, you don't think it's
19 relevant when they're selling in high
20 markets, you think it's relevant when
21 they're selling their 10 last megawatts.
22 So therefore, for purposes of the Tariff
23 that your client would pay in some
24 circumstances, what you're suggesting is
25 that for that imbalance energy, Hydro-

1 Québec, as a supplier of imbalance energy,
2 will sell that energy to clients who are
3 causing imbalances at the lowest-priced
4 market?

5 Me PAULE HAMELIN :

6 Je vais m'objecter, Monsieur le Président, parce que
7 la question a été posée presque deux ou trois fois
8 maintenant puis il a toujours fait l'ajout en
9 fonction du marché qui exporte. Alors, je pense que
10 ce n'est pas... la question a été déjà posée et la
11 réponse a été déjà donnée par le témoin.

12 Me ÉRIC DUNBERRY :

13 Monsieur le Président...

14 LE PRÉSIDENT :

15 Oui, Maître Dunberry?

16 Me ÉRIC DUNBERRY :

17 Bien, j'allais simplement dire que nous sommes dans
18 le coeur de l'application de la formule de monsieur
19 Marshall. Je comprends qu'il y a une mécanique et
20 une raison et une explication, nous allons y venir.
21 Mais ce que je veux comprendre c'est que dans son
22 application, lorsque le fournisseur est en situation
23 d'export, aux fins du calcul du prix de référence
24 pour les services de compensation d'écarts, le prix
25 de référence est celui qui correspond au marché au

1 prix le plus bas. Je veux juste bien comprendre que
2 c'est ça. C'est ce qui est écrit mais je veux voir
3 s'il y a autre chose ou si c'est bien ça.

4 Me PAULE HAMELIN :

5 A nouveau, mon confrère essaie de séparer la réponse
6 et c'est son interprétation. L'expert a déjà
7 répondu là-dessus et a donné une longue réponse. Il
8 revient en essayant de juste scinder alors que ce
9 n'est pas ça la formule et ce n'est pas ça qui est
10 proposé. Ça paraît clair des réponses antérieures
11 données par le témoin.

12 LE PRÉSIDENT :

13 Alors, la Régie va permettre la question mais va
14 donner un peu les indications suivantes. Il y a eu
15 un long débat lors de l'interrogatoire de monsieur
16 Cormier je crois sur cette question-là puis les
17 réponses, en tout cas, les réponses des témoins
18 étaient à l'effet, tel que monsieur Marshall vient
19 d'exprimer sa position, à l'effet que ce n'est pas
20 nécessairement le prix le plus bas, c'est le prix
21 applicable aux 10 derniers mégawatts au moment où
22 l'écart serait créé.

23 Et la Régie va vous inviter, vous pouvez
24 continuer la question, mais étant donné que c'est
25 cela la réponse, on ne peut pas quand même essayer

1 de toujours prétendre que c'est le prix le plus bas,
2 ce n'est pas la position de l'autre. Donc, à un
3 moment donné, vos questions doivent tenir compte
4 aussi des réponses qui sont fournies.

5 Donc, la Régie vous permet de continuer en
6 tenant compte de ses remarques.

7 11H23

8 Me ÉRIC DUNBERRY :

9 Q.160 So, Mr. Marshall, if I understand what
10 you're saying, and I'm reading this in
11 French:

12 « *La valeur du prix*
13 *proxy... »*

14 Me PAULE HAMELIN :

15 Peut-être juste parce que you're saying this alors,
16 ce n'est pas... là, ça, ce n'est pas... vous référez
17 à ce que EBMI a présenté comme position alors il
18 faut juste faire attention.

19 LE PRÉSIDENT :

20 Là, nous devons laisser maître Dunberry poser ses
21 questions. Je pense que je vais un peu redire ce
22 que j'ai dit à une fois précédente, si vous avez une
23 objection la Régie va vous entendre.

24 Me PAULE HAMELIN :

25 Parfait.

1 LE PRÉSIDENT :

2 Et à moins de cas majeur, un peu, les ajustements ou
3 pour faciliter les débats la Régie peut intervenir
4 aussi au besoin pour le faire.

5 Me ÉRIC DUNBERRY :

6 Merci, Monsieur le Président.

7 Q.161 So, Mr. Marshall, let me read this again
8 in French with you. When Hydro-Québec is
9 a net exporter, and I quote:

10 « La valeur du prix
11 proxy sera égale au
12 prix le moins élevé
13 aux interconnexions
14 importantes avec les
15 marchés de l'Ontario,
16 du New York ISO et de
17 la Nouvelle-
18 Angleterre, ajustés
19 pour les coûts de
20 transport et les
21 autres frais de
22 transactions. »

23 Do you agree or not with that statement?

24 R. Now, when I look at it, I think they left
25 out the piece to which the export is

1 going.

2 Q.162 Okay.

3 R. So, it's not just the lowest price. It's
4 the lowest price to which export is going.

5 Q.163 Okay. Now, if we read the next part of
6 that paragraph:

7 « Alors, en d'autres
8 mots, les derniers 10
9 mégawatts vendus à
10 l'extérieur sont
11 réputés être vendus
12 sur le marché offrant
13 le prix le plus
14 faible. »

15 That is clearly what you said a moment ago
16 as well.

17 « Deuxièmement, pour
18 les heures où le
19 Québec est un
20 importateur net, la
21 valeur du prix proxy
22 sera égale au prix le
23 plus élevé aux
24 interconnexions
25 importantes avec les

1 *marchés de l'Ontario,*
2 *du New York ISO et de*
3 *la Nouvelle-*
4 *Angleterre, ajustés*
5 *des coûts de transport*
6 *et autres frais de*
7 *transactions. Dans ce*
8 *cas, les derniers 10*
9 *mégawatts achetés à*
10 *l'extérieur sont*
11 *réputés être achetés*
12 *sur le marché offrant*
13 *le prix le plus*
14 *élevé. »*

15 With the addition that this is the energy,
16 the lowest price from a market from which
17 it is importing, obviously, I understand
18 the additional line, but would you agree
19 with that statement here that we find in
20 EBMI's evidence?

21 R. When you add the clause, if they're
22 purchasing, it's from the market. The
23 lowest... it's the highest-priced market
24 from which they are purchasing energy.

25 Q.164 Okay. So, when Hydro-Québec is a net

1 exporter, for purposes of applying your
2 formula, the equation will be driven by
3 the lowest-priced market for the less 10
4 megawatts as you say everytime but the
5 equation in its application will be driven
6 by the lowest-priced market?

7 R. No. The equation will be driven by the
8 price of the market to which Hydro-Québec
9 is selling, okay, to all of the markets to
10 which Hydro-Québec is selling, which
11 market has the lower price. That will
12 determine the 10 megawatt price.

13 Q.165 Okay. And when Hydro-Québec is a net
14 importer, the application of your formula
15 will be driven by the market to which it
16 is importing, from which it is importing,
17 which has the highest price?

18 R. That's correct.

19 Q.166 Okay. So, when Hydro-Québec is exporting,
20 it is a net seller. So it is selling at
21 a price which is based on the lowest-
22 priced market to which it is exporting?

23 R. Yes.

24 Q.167 And when Hydro-Québec is a buyer, it is
25 buying from a net importer, I mean, it is

1 buying from the market from which it
2 imports, which has the highest price?

3 R. The market from which it's importing, yes.

4 Q.168 Okay. That's why I kept referring as you
5 do which is an approach which for us, and
6 we won't debate this now, we call it buy
7 high and sell low. We'll get into this
8 right now in your presentation.

9 R. But that's an improper conclusion out of
10 that.

11 Q.169 Okay. That's just for...

12 R. That's not the situation at all.

13 Q.170 But that's just for reference purposes.
14 So, you understand what I'm saying. I
15 understand you disagree, but my questions
16 and your presentation refer to this notion
17 of buy high, sell low. That's what I
18 meant.

19 R. Well, your witness, you know, Dr. Orans
20 presented the issue that Hydro-Québec
21 always buys low and sells high.

22 Q.171 Okay.

23 R. And I provided evidence to show that they
24 often buy from all markets, so they buy
25 high lots of times and they sell low lots

1 of times.

2 Q.172 Okay.

3 R. That's the only point.

4 Q.173 Okay. We'll go there right now, page 11
5 of your presentation. I just want to make
6 sure we close that loop.

7 Now, page 11 of your presentation.
8 This is where we have these words « buy
9 low, sell high". And it is a summary of
10 Dr. Orans' presentation that you made.
11 And the buy low, sell high, these words
12 are words that you and I have just defined
13 for the purposes of examination in the
14 context of the application of your
15 formula.

16 And then you say...

17 Me PAULE HAMELIN :

18 Excusez, est-ce que vous voulez... le témoin n'a
19 justement pas accepté votre définition « for the
20 purpose of his formula ». Au contraire. Alors,
21 peut-être que c'est mal citer le témoin. Je vous
22 demanderais de reformuler votre question.

23 Me ÉRIC DUNBERRY :

24 Q.174 So the question I have for you, Mr.
25 Marshall, on page 11, is you say:

1 « *Simplicity ignores*
2 *the reality of Hydro-*
3 *Québec activity in the*
4 *markets. »*

5 And then you say:

6 « *Do they always buy*
7 *low? Do they always*
8 *sell high? »*

9 They, meaning Hydro-Québec?

10 R. Yes.

11 Q.175 Okay. Now, the key word appears here to
12 be « always », do they always? Now, can
13 we agree that be it Brookfield or be it
14 Hydro-Québec Production or any other
15 generator, as a goal and as an objective,
16 they will perhaps not always buy low and
17 sell high because there may be
18 constraints, but they will certainly
19 always try to buy low and sell high in
20 neighbouring markets, be it Brookfield or
21 be it any other generator in the world
22 that, if you put yourself in their shoes,
23 they will try always within their legal
24 obligations and requirements to buy low
25 and sell high. Would you agree that it's

1 a fair hypothesis to think that they will
2 try that?

3 R. I already answered that question earlier
4 to say that any generator, any marketer
5 will try to purchase at the lowest cost,
6 produce at the lowest cost and sell at the
7 highest cost. That's the nature of
8 competition in the market place.

9 Q.176 Okay. Now, you agree with me that it
10 would be unreasonable, unreasonable to
11 base a tariff, to design a tariff on the
12 assumption that a generator would buy high
13 and sell low if you want to compensate
14 fairly or justly that generator?

15 I'm not in the always and the often
16 and in the sometimes, I'm simply asking
17 you whether it is reasonable to base a
18 tariff on the assumption that they will
19 buy high and sell low.

20 R. You want to make that a little clearer,
21 all right? I mean, if you say buy high,
22 they would buy at \$80 and sell it at \$60?
23 Nobody is going to do that.

24 Q.177 Yes, I agree.

25 R. It's in any one hour you have to look at

1 the marketplace and determine what is
2 really going on. And my proposal lays out
3 a way to determine what the value of the
4 last 10 megawatts that Hydro-Québec
5 dispatched, whether they bought it or sold
6 it, it's the last 10 megawatts and it
7 reflects the activity of Hydro-Québec in
8 the marketplace.

9 Now, Hydro-Québec themselves have
10 evidence in front of FERC in different
11 cases in the U.S. that say they don't
12 always buy high and sell low, that they
13 try to sell into the New England market
14 most of the time as their primary market,
15 but lots of times they have more energy
16 and then the sell into New York and the
17 price is lower.

18 So, Hydro-Québec themselves indicate
19 that they can't always buy high. They
20 simply buy where they can that makes sense
21 and they sell wherever they can that makes
22 sense.

23 Q.178 Okay.

24 R. And our proposal gives you a price that
25 tracks that.

1 Q.179 Okay. Page 15, Mr. Marshall, just to
2 close on this. You have this chart and
3 the third bullet is to say that... the
4 third and fourth bullets, what you say is
5 that:

6 « *Hydro-Québec's real*
7 *behaviour is counter*
8 *to Dr. Orans'*
9 *assumptions.* »

10 Dr. Orans' assumptions being that a
11 reasonable generator would buy low and
12 sell high. So, you're saying that Mr.
13 Orans' assumption is contradicted by real
14 behaviour.

15 In the bullet before that, you say:

16 « *Hydro-Québec is not*
17 *able to use storage to*
18 *always buy low and*
19 *sell high.* »

20 You've used the word « always » probably
21 five or six times now. Again, it appears
22 to be the key word in your presentation,
23 always. Would you agree on the following
24 principle, I'm not talking about
25 sometimes, often or always, I'm taking

1 about a notion. Would you agree that be
2 it Brookfield, Hydro-Québec or any
3 generator with storage capabilities, that
4 this generator, reasonable generator,
5 will, as often as possible, try to use its
6 storage capabilities as a tool to seize
7 market opportunities and buy low and sell
8 high? Do you think that that is a
9 reasonable assumption?

10 Me PAULE HAMELIN :

11 Monsieur le Président, je m'objecte. C'est la
12 quatrième fois, je pense, qu'on pose la question,
13 là.

14 Me ÉRIC DUNBERRY :

15 Non, la question, Monsieur le Président, réfère
16 spécifiquement à la capacité d'entreposage parce que
17 c'est un élément distinctif que nous avons ici et on
18 a parlé de généralement comme principe d'affaires
19 mais, là, ici on parle d'un élément qui sera
20 important en plaidoirie sur la conduite raisonnable
21 d'un producteur qui a des réservoirs. C'est un
22 élément distinctif et important dans le dossier.

23 LE PRÉSIDENT :

24 La Régie permet la question.

25 Me ÉRIC DUNBERRY

1 Q.180 So, Mr. Marshall, you heard the question,
2 do you think again that it is reasonable
3 to agree that a reasonable generator with
4 storage capabilities will always try to
5 use these capabilities to seize market
6 opportunities and sell low... sorry, sell
7 high and buy low?

8 R. Generally, they will try to manage the
9 storage to sell as high as possible to
10 markets that are accessible and when
11 storages are low, to buy energy from
12 wherever it's accessible at the lowest
13 prices that are possible.

14 Q.181 Okay.

15 R. Generally that is the case, but even
16 Hydro-Québec themselves, in their
17 strategic plan, state clearly that they
18 often play on the markets and change their
19 marketing strategy when storages are low
20 and buy; they stop selling into the lower
21 priced markets. So, they acknowledge that
22 they sell into the lower priced markets,
23 you know, on occasion.

24 Q.182 On occasion, okay. But again we're
25 designing a tariff here. So, I'm not

1 looking on occasions or on isolated
2 events. I'm looking at a concept.

3 When you say at the bottom of page 15
4 that:

5 « Dr. Orans'
6 assumption is
7 contradicted by
8 behaviour of Hydro-
9 Québec. »

10 Now, do you seriously think that Hydro-
11 Québec Production's behaviour is more
12 consistent with the opposite hypothesis,
13 that is Hydro-Québec's conduct is more
14 consistent with a buy high, sell low than
15 it is consistent with a buy low, sell
16 high? I hope it's clear? The question
17 may be a bit convoluted, but I think it's
18 understandable. Do you think that it's
19 more consistent with Hydro-Québec
20 Production's conduct that they would buy
21 high and sell low as opposed to buying low
22 and selling high?

23 Which one is more reasonable to you?

24 R. I already said, they will attempt to buy
25 from the markets that are most profitable

1 for them to buy from and to sell to. And
2 the reality is that they don't always sell
3 to the highest market only and they don't
4 always buy from the lowest market only.

5 Usually, when you look at all the
6 data, usually they're selling to two
7 markets and usually when they're buying,
8 they're buying. When they're a net buyer,
9 they're buying from two markets.

10 So, the concept of always buying from
11 the lowest and always selling to the
12 highest doesn't work because usually
13 they're buying in the middle and selling
14 in the middle and our formula captures
15 that behaviour...

16 Q.183 Okay.

17 R. ... which reflects the storage value that
18 Hydro-Québec have because it's the reality
19 of what they're actually transacting into
20 the markets.

21 Q.184 I'd like now to move to... yes, and to
22 refer to what you've just said when there
23 are two markets, in accordance with your
24 own formula, you would use the market that
25 generates the lowest of these two prices

1 when it is selling. According to your
2 formula, when you have more markets, you
3 always refer to the lowest markets when
4 there is a sale, according to your
5 formula.

6 R. Yes, because if they could sell more
7 energy into the higher priced market,
8 using your philosophy, general philosophy
9 that you would always try to capture the
10 most amount you can out of the market, you
11 would sell into that market. So, there
12 has to be a reason that you can't access
13 that market anymore. You sold everything
14 you can in it, but you're now willing to
15 sell energy into a market at a lower
16 price.

17 So, you're quite willing to sell that
18 last 10 megawatts at a lower price. It
19 reflects the behaviour of Hydro-Québec as
20 a marketer.

21 Q.185 Okay. I heard your position. I'd like
22 now to move to some other points of
23 implementation. If you look at footnote
24 number 7 on page... footnote number 1 on
25 page 7.

- 1 R. Is this in the present...
- 2 Q.186 In the main report, I apologize.
- 3 R. Yes, I have it.
- 4 Q.187 Okay. Now, when you mean « *Hydro-Québec*
- 5 *is a net importer* », you refer to Hydro-
- 6 Québec Corporation, is that correct?
- 7 R. Yes.
- 8 Q.188 So, you're not referring to Hydro-Québec
- 9 Production, you're referring to Hydro-
- 10 Québec the whole corporation. Is that
- 11 correct?
- 12 R. Yes.
- 13 Q.189 Okay.
- 14 R. Because the Hydro-Québec Distribution have
- 15 surplus energy today under the contracts
- 16 that they have and Hydro-Québec
- 17 Distribution actually goes out and sells
- 18 some of that energy in the market. So,
- 19 you know, they are a part of Hydro-Québec.
- 20 They are a part of the... they are a
- 21 player in the market when they have that
- 22 surplus energy and they're selling. They
- 23 also go into the markets and buy from
- 24 other than Hydro-Québec under contracts
- 25 that they bring to the Régie for approval,

1 so they are also an importer.

2 So, it's the Hydro-Québec Corporation
3 that we're looking at here who is a net
4 importer/exporter.

5 Q.190 And this is why, when you're doing your
6 calculations for net import and net
7 export, you're using all flows on the
8 interconnections and not only Hydro-Québec
9 Production's flows?

10 R. No, we don't use all flows. We use the
11 flows on the interconnections that are for
12 Hydro-Québec Production or Hydro-Québec
13 Distribution.

14 Q.191 Okay.

15 R. But we don't use Brookfield flows on the
16 interconnections or OPG's flows or NLH's
17 flows.

18 Q.192 Okay. So, I just want to make sure I
19 understand. When you look at the
20 footnote, at the bottom of the footnote,
21 you say that, last line:

22 « Only the energy
23 scheduled by NLH or
24 its agent is to be
25 considered as an

1 *import. The remainder*
2 *of the flow is a*
3 *designated resource*
4 *from HQD and it is to*
5 *be considered as*
6 *generation internal to*
7 *Quebec. »*

8 R. And the reason for that is to reflect the
9 fact that the vast majority of Churchill
10 Falls Power is under contract to Hydro-
11 Québec and supplies Hydro-Québec.

12 So, even though it's outside HQT's
13 system, I don't want it to distort the
14 formula. It's considered to be a
15 generator inside Quebec supplying Quebec
16 load.

17 Q.193 Okay. And the more or less 265 megawatts
18 of wheel-throughs...

19 R. Is not used.

20 Q.194 Is not included?

21 R. Not included.

22 Q.195 Because I read that it is included.

23 R. No, no.

24 Q.196 « All the energy
25 scheduled by NLH or

1 *its agent is to be*
2 *considered as an*
3 *import. »*

4 So, when you calculate your import and
5 your export, I understood that you were
6 including that 265 megawatts from
7 Labrador. Are you or are you not?

8 R. If that 265 megawatts from Labrador is
9 scheduled from NLH to HQT, and it's on a
10 path that's going into Quebec and staying
11 in Quebec, then it's an import.

12 If it's on a wheel-through, it's not
13 included.

14 Q.197 It's not included or it balances out? In
15 other words, you have an import and you
16 have an export and it balances out.

17 R. They will cancel out, but they are not
18 included in the formula of determining
19 whether Hydro-Québec is a net importer,
20 that the recall power from NLH...

21 Q.198 So, what you're suggesting, as wheel-
22 throughs...

23 R. ... it's not included.

24 Q.199 ... should not affect...

25 R. Right.

1 Q.200 ... the status of being a net... or a net
2 exporter or a net importer nor should it
3 affect the price, I guess?

4 R. That's correct.

5 Q.201 Okay. That's what you're saying.

6 So, the question whether Hydro-Québec
7 is a net importer or a net exporter,
8 really... I think you've just answered
9 that.

10 Now, the idea of FERC was to find a
11 formula that would reflect the generators
12 opportunity costs or incremental costs.
13 Is that correct?

14 R. FERC's recommended pricing on incremental
15 cost is the cost of the last 10 megawatts
16 dispatched for any purpose.

17 Q.202 Okay. Now, your approach is not to focus
18 on Hydro-Québec Production's costs or
19 incremental costs or opportunity costs but
20 to look at Hydro-Québec Corporation's
21 equivalent of the incremental costs or
22 cost of the last 10 megawatts, right?

23 11H45

24 You're not focusing on the production
25 division, you're looking at the entire

1 corporation here again to determine what
2 FERC refers to the generator's cost for
3 the last 10 megawatts dispatched.

4 R. Well, we're back to the discussion we had
5 earlier where my view of the transmission
6 provider is, you know, effectively the
7 total Hydro-Québec. So, when Hydro-Québec
8 is importing power, it's importing power
9 for two reasons, either to store it or to
10 supply local load. So, it's Hydro-Québec
11 Distribution that's then consuming the
12 power or it's going into the reservoirs of
13 Hydro-Québec Production.

14 So, you can't differentiate between
15 the two, Hydro-Québec is a net importer,
16 it's all of the aspect of Hydro-Québec.
17 When it's a net exporter, it is
18 essentially Hydro-Québec Production that's
19 exporting into the export market.

20 Although, on occasion, Hydro-Québec
21 Distribution has surplus energy. But my
22 understanding is that Hydro-Québec
23 Distribution cannot export out of Quebec
24 so they basically sell the power to Hydro-
25 Québec Production. Hydro-Québec

1 Production then exports it into the other
2 markets. That's my understanding.

3 So, when you look at the transmission
4 customers on OASIS, you have to look at
5 the customers, is it HQD that's the
6 customer or is it HQP that's the customer,
7 and what is the actual scheduled flows and
8 where are they going in order to determine
9 the net import or net export situation.

10 Q.203 So, all this to say that when you say in
11 your report that you're looking at the
12 cost, incremental cost of the last 10
13 megawatts dispatched, you're looking at
14 Hydro-Québec Corporation's entire
15 operation?

16 R. Yes. And again, it's not the cost of
17 Hydro-Québec, it ends up being the
18 opportunity cost determined by the last 10
19 megawatts owed of the neighbouring market
20 to which the last 10 megawatts went.

21 Q.204 Now, in your equation, I didn't see any
22 adjustments for losses. You know what
23 losses are? I guess you do?

24 R. Yes, I do.

25 Q.205 Okay. Is there any adjustment anywhere

1 for the losses that may be incurred, the
2 5%, 5.2%?

3 R. No, not in the formula but it probably,
4 you know, should be looked at.

5 Q.206 Now, you also, in your Schedule A, because
6 you provided certain calculations, you may
7 want to go at Schedule C, maybe you don't,
8 just speaking from memory. I notice that
9 you're including in the calculations of a
10 net import and net export flows from and
11 to MATI, MAFA and MAHO, who are known to
12 your client, Brookfield. Now, these are
13 not imported or exported outside of Quebec
14 *per se* so is there a reason why you took
15 these flows into account, Mr. Marshall?
16 Is there a reason why you took these flows
17 into account?

18 R. Do you want to point out where they are?

19 Q.207 Sure, sure, we could go to the Schedule.
20 It's Schedule C, I believe. C-1, page 4
21 out of 10, there is an example there.
22 There may be other examples. It's
23 Schedule C-1 of your report.

24 Monsieur le Président, Mr. Marshall
25 produced a number of Schedules with his

1 report and there is a Schedule C-1.

2 So, if you go at Schedule C-1, for
3 example, page 4 out of 10, there is a
4 reference here to MATI-HQT.

5 R. Yes.

6 Q.208 Now, again, for the application of your
7 formula, do we have to include flows - and
8 maybe they are exported or imported, it's
9 not clear to me, perhaps you have a better
10 explanation but as a concept, do we have
11 to include flows who are not imported or
12 exported from Quebec when let's say there
13 is a transaction to supply the native load
14 from Brookfield, a contract with the
15 distributor or a contract for the native
16 load? Would these flows be considered as
17 part of your equation?

18 R. No, in actual fact, they would not, unless
19 the one flow that is from MATI to HQT
20 where the customer is HQM, as Hydro-Québec
21 Marketing, then that energy is going to
22 Hydro-Québec Production and what they do
23 with it would be included in the
24 calculations. Anything that comes from
25 Brookfield, if it's a wheel-through, would

1 not be included. If it's a transaction
2 selling to... if it goes to HQT and stays
3 there and doesn't exit, it would be
4 included.

5 Q.209 Now, is there in your formula an
6 adjustment to be made to recognize the
7 value of storage? In other words, the
8 possibility for Hydro-Québec Production to
9 store energy and sell it or the
10 possibility to use the storage to buy
11 energy and store it?

12 Because on page 14 of your analysis
13 there's a box, in your PowerPoint
14 presentation. If you look at your
15 PowerPoint presentation, on page 13, on
16 page 14 as well, we see the notion of
17 contemporaneous opportunity costs. And
18 you present these two examples and you
19 refer to the contemporaneous opportunity
20 cost of the last 10 megawatts.

21 Now, is there anywhere in your report
22 or in your presentation a recognition that
23 storage has value and that this value may
24 equate an opportunity on the market? And
25 would there be any adjustment in your

1 report to recognize the ability to wait
2 and buy or sell at an appropriate time?
3 Or your equation is only based on the
4 notion of a contemporaneous opportunity
5 cost?

6 R. The equation is based on the cost in the
7 hour based on the adjoining markets and
8 based on Hydro-Québec's activity in those
9 markets. So, the decision to be a net
10 importer or a net exporter already
11 reflects the storage value of Hydro-Québec
12 Production in making that decision to
13 either buy or sell. So, there is no need
14 for any additional adjustment to recognize
15 storage. The formula already includes
16 storage in the activity of Hydro-Québec to
17 make the transaction.

18 Q.210 Thank you. If we move to page 14 of your
19 presentation, just to focus on this one
20 example. We can do 13 as well later if
21 you want, but let's start with 14. So, in
22 this slide, we see that Hydro is a net
23 exporter of 1,000 megawatts, that's
24 correct?

25 R. Yes.

1 Q.211 It exports to ISO New England, it exports
2 to New York ISO for 1,400 megawatts, and
3 it imports from ISO 400, for a net export
4 of 1,000 megawatts. So, Hydro-Québec is
5 a net seller?

6 R. Yes.

7 Q.212 Now, you say in the box that Hydro-Québec
8 in that configuration would sell its
9 energy to Brookfield, let's say, so Hydro-
10 Québec will sell its energy to Brookfield
11 at a price which is based on the lowest-
12 priced market. In this case, it would be
13 \$40, is that correct?

14 R. No, that's not correct. Where do I say
15 Brookfield anywhere there?

16 Q.213 No but I'm using Brookfield because that's
17 an example everybody has been using for a
18 while. So, let's say we use Brookfield.

19 R. Well, in what context? Where on this
20 chart can I refer to Brookfield?

21 Q.214 Okay, we won't refer to Brookfield, any
22 client, okay? Hydro-Québec in this
23 configuration, we have a net exporter of
24 1,000 megawatts. In that configuration,
25 let's say a client under-injects 10

1 megawatts, any client - I'm just looking
2 at your formula, how it applies - so we
3 have a net exporter and let's say we have
4 an under-injection. This is actually your
5 hypothesis. If you look on page 14, it
6 says:

7 « Generator A over or
8 under-injects its
9 schedule. »

10 So, let's say there's an under-injection
11 of 10 megawatts. So, Hydro-Québec is a
12 net seller and a client under-injects 10
13 megawatts. So, that client has created an
14 imbalance of 10 megawatts, do we agree?

15 R. If it under-injects, yes.

16 Q.215 Now, in that configuration, Hydro-Québec
17 Production will correct the imbalance and
18 will sell 10 megawatts, will supply 10
19 megawatts, to correct that under-injection
20 of 10 megawatts, do we agree?

21 R. They won't sell it. We had this
22 discussion the other day. These
23 transactions are all done, you know, an
24 hour ahead on the markets and the
25 schedules are done. Hydro-Québec balances

1 the system in real time and throughout the
2 hour. So, all of the generation resources
3 that are balancing are there to balance
4 all of the imbalance in the Hydro-Québec
5 system. So, they're balancing for changes
6 in load, Hydro-Québec Distribution's load,
7 that are incorrectly scheduled, so they
8 have to adjust for those imbalances. They
9 have to adjust for the imbalances of
10 Hydro-Québec generators that don't get
11 dispatched exactly at their schedule. So,
12 all of this happens. And on top of all of
13 that, then they have to adjust with a 10
14 megawatt error in the schedule from a
15 party that's going point-to-point.

16 So, that is done in real time. What
17 we're talking about, there's no sale or
18 purchase going on here. This is simply a
19 settlement after the fact to determine
20 what's a reasonable value for that 10
21 megawatts of error that the transmission
22 customer had in their schedule. And that
23 settlement we deem should be at the 10
24 megawatt value of the last transaction
25 that Hydro-Québec did in the markets.

1 Q.216 Mr. Marshall, bear with me. I am simply
2 trying to apply your formula, okay? You
3 have proposed a formula, I just want to
4 understand how this will apply. So, let's
5 come back to my example.

6 Today, at 11:55, a client under-
7 injects by 10 megawatts, as a starting
8 point. That 10 megawatts creates an
9 imbalance, that imbalance has to be
10 corrected instantaneously, immediately;
11 there's a correction made by Hydro-Québec
12 Production as supplier of the imbalance
13 service. Do we agree?

14 R. It won't be instantaneous but they have to
15 adjust and maintain a balance when...

16 Q.217 In 30 days from now, there will be a
17 settlement, a financial settlement for the
18 value of that 10 megawatts that was
19 supplied by Hydro-Québec Production, we
20 agree?

21 R. Yes.

22 Q.218 Now, in 30 days from now, someone will
23 prepare an invoice to charge the client
24 the value of that 10 megawatts. Now, for
25 purposes of establishing that invoice,

1 they will look at your equation and they
2 will see: Well, I have to know if on May
3 the 10th at 12 o'clock Hydro-Québec
4 Production, or Hydro-Québec in your case,
5 was a net importer or a net exporter,
6 right?

7 R. Yes.

8 Q.219 That would be the case, okay. Now, we're
9 back on page 14. So, today, let's assume
10 today at 11:55, Hydro-Québec is a net
11 exporter, okay? If today Hydro-Québec is
12 a net exporter, we're within the same one
13 hour. The imbalance was caused at 12
14 o'clock, today at 12 o'clock, Hydro-Québec
15 is a net exporter. So, when the invoice
16 is prepared, someone will say: Well, at 12
17 o'clock today Hydro-Québec was a net
18 exporter. So we will bill the client
19 based on your equation, a price that will
20 be based on the lowest price to markets to
21 which Hydro-Québec Production or Hydro-
22 Québec was exporting and we will take the
23 lowest of these prices to which it was
24 exporting. Do we agree?

25 R. Yes, it would be \$40, but it wouldn't be

1 billed for this hour specifically. You
2 net all of the imbalances over the whole
3 month that are inside the 1.5% range, the
4 first two megawatts, they all net out, and
5 then you only do a settlement on what the
6 net is over the month. And this is an
7 issue because in Hydro-Québec's proposal,
8 there's no netting over the month, they
9 want to charge the penalty prices in every
10 hour over the whole month, which is a
11 significant additional cost to
12 transmission customers.

13 Q.220 Now, you understand Hydro-Québec in my
14 example, as a supplier, has an obligation
15 under the Tariff to supply the 10
16 megawatts. I mean today at 12 o'clock
17 there was no negotiation on the phone,
18 Hydro-Québec simply supplied the 10
19 megawatts because it has to maintain the
20 equilibrium, we agree?

21 R. Yes.

22 Q.221 Now, they have no choice, they have to
23 supply. Now, I'm not sure Hydro-Québec
24 Production is always pleased to supply 10
25 megawatts with imbalances, maybe they

1 would do something else with that 10
2 megawatts, maybe they would store it for
3 a day, maybe they would store it for a
4 year, maybe they would sell it. They have
5 options for that 10 megawatts. So,
6 because a client accidentally or
7 intentionally delivered 90 megawatts as
8 opposed to 100 megawatts, Hydro-Québec was
9 forced to supply 10 megawatts, it had no
10 option, it had to supply 10 megawatts.
11 I'm asking you whether the loss of that
12 option has to be recognized for a fair
13 compensation?

14 R. Well, first of all, Hydro-Québec
15 Production won't even know that they're
16 supplying the 10 megawatts until well
17 after the fact. I mean, there's
18 generation that's being dispatched to
19 balance the entire system. They don't
20 know where all of the imbalances are, you
21 know, and they will simply... it is a
22 piece of the total imbalance that's
23 supplied in that hour. And it's a
24 settlement long after the fact.

25 So, what Hydro-Québec Production

1 would have done with that 10 megawatts if
2 they didn't supply it, I don't know. The
3 reality is they have made decisions to
4 sell into ISO New England 800 megawatts
5 and into New York 600 megawatts and buy
6 400 from Ontario. So, in that hour,
7 that's the decisions Hydro-Québec
8 Production has made in order to get \$40
9 energy, to get compensated for \$40 energy
10 out of New York.

11 On top of all of that there is an
12 imbalance, and let's say it's in
13 Brookfield's schedule going into New
14 England, so there's an imbalance at MATI,
15 all right, of maybe 10 megawatts, okay,
16 it's a settlement after the fact. The
17 value of it is the \$40 that Hydro-Québec
18 already decided they were prepared to sell
19 600 megawatts at \$40. That's what the
20 settlement should be.

21 Q.222 I understand what your view is. Now, your
22 formula, the way it applies, would apply
23 the same way whether the imbalance, the
24 reference price, not the penalties but the
25 reference price, would be based in this

1 case on the lowest-priced market, whether
2 the imbalance is five megawatts, 10
3 megawatts or 100 megawatts, it would be
4 the same reference price, it would be the
5 lowest-priced market as a base for the
6 application of your formula, right?

7 R. The reference price would be determined by
8 the market with the transmission
9 adjustment back into Quebec.

10 Q.223 Yes.

11 R. And then, if it was outside the first
12 band, it was into band 2, you add or
13 subtract 10%. And if it was in band 3,
14 you add or subtract 25%. So, there is a
15 penalty attached to the reference price
16 depending upon the magnitude of the
17 imbalance.

18 Q.224 But the reference price is always based on
19 the lowest-priced market irrespectively of
20 the fact that you have five, 10, 15 or 25
21 megawatts. I'm not referring to the
22 penalties, I'm referring to the actual
23 reference price.

24 R. Yes, it's always based on the market to
25 which the last 10 megawatts were sold.

- 1 Q.225 Now, I understood that, according to
2 your... I think it was monsieur Cormier's
3 scenario that he says that Hydro-Québec is
4 in export position most of the time, 80%
5 or 79% of the time. I saw this in one of
6 the presentations.
- 7 R. Yes, I think Michel did that.
- 8 Q.226 Maybe, monsieur Cormier, you can assist me
9 here, if you remember where this is?
- 10 R. Yes, I remember seeing that I think in Mr.
11 Cormier's presentation, there's a table
12 there.
- 13 Q.227 So, I think the number was 79% on average
14 for 2009 and 2010.
- 15 M. RICHARD ST-JEAN :
- 16 Q.228 I don't remember the year. I remember it
17 changed from year to year.
- 18 Me PAULE HAMELIN :
- 19 Est-ce qu'on peut juste référer au document pour
20 qu'on puisse tout le monde suivre, s'il vous plaît?
- 21 Me ÉRIC DUNBERRY :
- 22 Oui. Monsieur St-Jean, vous avez le document?
- 23 R. Yes, I believe it's on page 5 of Mr.
24 Cormier's report. Presentation. C-6.97.
- 25 Q.229 In C-6.97, what we see on that page is

1 that according to your calculations, or
2 Brookfield's calculations, Hydro-Québec
3 would be an exporter, or was an exporter,
4 79% of the time in 2009 and 2010.

5 R. 78.

6 Q.230 78%, okay. Now, starting with that number
7 that you... I don't know if it's accurate
8 or not so I'm not adopting or endorsing
9 that number, I'm just using it because
10 it's in your presentation. But assuming
11 as a hypothesis that Hydro-Québec for
12 these two years was 78% of the time a net
13 exporter, now, don't you think that your
14 pricing formula is an incentive to under-
15 inject in the system? Once you know that
16 Hydro-Québec will charge you the lowest
17 market price, you scheduled 100 megawatts.
18 Now, if you deliver only 90 megawatts you
19 will buy that from Hydro-Québec at the
20 lowest market price in all neighbouring
21 markets.

22 Me PAULE HAMELIN :

23 Monsieur...

24 Me ÉRIC DUNBERRY :

25 Q.231 So, don't you think that this is an

1 incentive to under-inject in the system
2 because you have a guaranty, you're
3 guaranteed that you will buy that energy
4 from Hydro-Québec Production at the lowest
5 available market price around?

6 Me PAULE HAMELIN :

7 Monsieur le Président, je vais m'objecter.

8 R. No...

9 Me PAULE HAMELIN :

10 Encore une fois, la prémisse c'est le *lowest price*,
11 je pense qu'on l'a dit plus qu'une fois. Alors, je
12 pense que mon confrère devrait reformuler sa
13 question en fonction de la formule réelle et de
14 l'application qui a été dite et redite par l'expert.

15 Me ÉRIC DUNBERRY :

16 Monsieur le Président, je ne sais pas si vous
17 aviez... si la question vous paraît être malhonnête,
18 incorrecte, incomplète ou incompréhensible, je vais
19 la reformuler mais...

20 LE PRÉSIDENT :

21 Disons que la façon dont vous posez la question,
22 quand vous référez que le prix sera toujours le prix
23 le plus bas sur le marché, la réponse a été très
24 claire de l'expert que...

25 Me ÉRIC DUNBERRY :

1 Dans les marchés où ils vont exporter, oui.
2 LE PRÉSIDENT :
3 C'est le prix des...
4 Me ÉRIC DUNBERRY :
5 J'ai compris.
6 LE PRÉSIDENT :
7 ... des derniers 10 mégawatts exportés. Et il
8 pourrait y avoir un autre marché moins cher, mais
9 que ça va être le prix du milieu qui va s'appliquer.
10 C'est ce qu'on a vu avec...
11 Me ÉRIC DUNBERRY :
12 Oui, oui.
13 LE PRÉSIDENT :
14 ... les réponses de monsieur Cormier. Donc, à
15 toutes les fois où vous introduisez la compensation
16 au prix du marché le plus bas...
17 Me ÉRIC DUNBERRY :
18 A celui qu'ils exportent.
19 LE PRÉSIDENT :
20 ... on revient toujours dans la même confusion.
21 Me ÉRIC DUNBERRY :
22 Oui.
23 LE PRÉSIDENT :
24 La Régie a bien compris l'application proposée par
25 monsieur Marshall. Il va rester éventuellement à

1 chaque partie à plaider à partir des positions
2 d'expert qu'ils préfèrent, puis la Régie n'a aucun
3 doute... la Régie n'a pas fait son opinion sur une
4 proposition plutôt que l'autre mais elle comprend
5 bien la façon dont serait appliquée la proposition
6 de monsieur Marshall quant à quel prix
7 s'appliquerait dans une circonstance. Il y a les
8 modalités évidemment de qui... des circonstances où
9 Hydro-Québec serait *net exporter* ou *net importer*,
10 qui sont des modalités. Mais pour la formule de
11 prix, ça semble assez compris. C'est bien compris.
12 Me ÉRIC DUNBERRY :

13 Alors, ce n'est pas utile de maintenir la question
14 si je comprends bien, Monsieur le Président.
15 Alors...

16 LE PRÉSIDENT :
17 Possiblement.

18 Alors, nous allons prendre la pause *lunch*
19 de toute façon, il est 12 h 08. Nous allons revenir
20 à 1 h 15 pour poursuivre.

21 SUSPENSION DE L'AUDIENCE

22 13H16

23 REPRISE DE L'AUDIENCE

24 LA GREFFIÈRE :

25 Veuillez prendre place, s'il vous plaît.

1 LE PRÉSIDENT :

2 Alors, reprise de l'audience. Et la Régie
3 apporterait peut-être une précision par rapport à la
4 dernière... aux dernières remarques que j'ai
5 formulées. Dans le fond, sur est-ce qu'il restait
6 un incitatif à surinjecter ou pas? Et
7 l'intervention de la Régie portait sur la prémisse
8 du prix le plus bas qui n'est pas tout à fait exact
9 par rapport à la position mais pour le reste, la
10 question n'est pas... n'est pas refusée comme telle.

11 Me ÉRIC DUNBERRY :

12 Parfait.

13 LE PRÉSIDENT :

14 Si vous avez une ligne à continuer dans ce sens-là,
15 vous pouvez le faire.

16 Me ÉRIC DUNBERRY :

17 Tout à fait. Tout à fait.

18 Q.232 Mr. Marshall, I would have a question
19 which was presented to you just before we
20 broke for lunch.

21 My question really, and I will just
22 find it again to make sure I get back to
23 the actual exact comment, my question was
24 in a context where HQ Production is a net
25 exporter and that in the event of an

1 under-injection by a transmission
2 customer, the price that will be used to
3 settle eventually the imbalance that may
4 have been caused, would be the lowest
5 priced market and markets in which Hydro
6 is an exporter. Don't you think that in
7 those circumstances, your proposal could
8 work as an incentive to under-inject in
9 situations where Hydro-Québec is an
10 exporter, Hydro-Québec Production is a net
11 exporter which happens according to your
12 number 78% of the time, and be therefore
13 able to buy from Hydro-Québec Production,
14 by supplying 90 megawatts instead of a 100
15 megawatts, buy from Hydro-Québec
16 Production at the lowest priced market and
17 those markets we've just defined?

18 In all circumstances, because Hydro-
19 Québec has an obligation to supply the 10
20 megawatts which are missing. So, once you
21 know you had a guaranteed supplier, at the
22 lowest available price in those markets to
23 which it exports, don't you think that's
24 an incentive? You have a captive supplier
25 that is by regulation constrained to sell

1 to you at the lowest available prices in
2 those exporting markets? That's a good
3 deal to me.

4 R. Well, actually, if we look at page 14
5 where the presentation where Hydro-Québec
6 is a net exporter, and we look at that
7 example, by my formula we're saying that
8 the market that Hydro-Québec is selling to
9 for its last 10 megawatts is New York at
10 \$40. And you're asking me is it incentive
11 for the generator A to under-inject in
12 order to get paid \$40 for his power. If
13 he wants to buy power, why wouldn't it buy
14 it from Ontario for \$30?

15 So, the formula is not an incentive
16 to lean on Hydro-Québec Production. The
17 generator has the opportunity to look at
18 all of the markets and decide where he
19 wants to buy power if he actually wants to
20 do a transaction.

21 Again, it's not about a transaction
22 ahead of time or after, it's about an
23 imbalance that occurs on a schedule and
24 it's a settlement after the fact and it's
25 not in a transmission customer's interest

1 to lean on the system, to try to take
2 advantage of the pricing arrangement.

3 Hydro-Québec TransÉnergie are going
4 to have all of this information and, if
5 it's regularly done, Hydro-Québec
6 TransÉnergie are going to lay a complaint
7 here before the Régie and say: This
8 customer is causing a problem here. We
9 have all of this information. That's
10 going to become publicly aware. It's not
11 in a corporation's interest to suffer that
12 type of damage in a public statement that
13 they are deliberately leaning on a system.
14 It's to their detriment.

15 There is plenty of incentive for them
16 in the plus or minus 10 and plus or minus
17 25% to encourage them to schedule
18 accurately and to behave properly.

19 Q.233 Okay. So, that was your answer.

20 Now, I'd like to move to page 4 of
21 your presentation. And we saw that,
22 earlier, you indicate that:

23 « Proxy prices, market
24 proxy prices is a
25 valid alternative to

1 *incremental cost*
2 *calculation. »*
3 You agree with that statement, I assume?
4 We saw it earlier.
5 R. Yes, that's true and the Régie agreed to
6 that in Phase 1.
7 Q.234 Yes. So, this is why, I guess, you chose
8 an approach that you think is based on a
9 market proxy price, that's the way you
10 present it at least, that it reflects the
11 market proxy of prices available in
12 neighbouring markets.
13 R. Yes, because based on the Régie's decision
14 in Phase 1...
15 Q.235 Yes.
16 R. ... they said: Find a price that relies
17 on the market, as a reasonable price.
18 Q.236 So, you recognize again that the Régie has
19 decided that it wanted its imbalance
20 pricing based on market prices?
21 R. Yes.
22 Q.237 Okay. Now, in order to design your
23 formula and to justify the use of the
24 lowest-priced market to which Hydro-Québec
25 Production exports when it is a net

1 exporter and the use of the highest-priced
2 market from which it imports when it is a
3 net importer, you have heavily relied on
4 the notion of the cost of the last 10
5 megawatts dispatched. This is one of the
6 expression that we see often in your
7 report and testimony, it's the cost of the
8 last 10 megawatts dispatched. Is that
9 correct?

10 R. Yes.

11 Q.238 Okay. So, and this is how you end up to
12 where you and I have discussed this lowest
13 price and highest price, this is because,
14 according to you, we have to factor into
15 this notion of the cost of the last 10
16 megawatts dispatched that you end up where
17 you end up and this is where we disagree,
18 you take the highest price, we suggest the
19 lowest price, you take the lowest price
20 which is... you take the lowest price, we
21 suggest the highest price. This is where
22 you and I entirely disagree on the end
23 result it's because, at the end of the
24 day, what you suggest is that we have to
25 factor into the concept this notion of the

1 cost of the last 10 megawatts dispatched.
2 Is that correct?
3 R. It's not just the cost, it's not the cost
4 of the last 10 megawatts, it's the
5 opportunity value of the last 10
6 megawatts.
7 Q.239 Okay. But everywhere in your presentation
8 we refer to the cost of the last 10
9 megawatts dispatched. We can see this on
10 page 4.
11 R. That's because that's the wording in FERC
12 that incremental cost is defined as the
13 cost of the last 10 megawatts dispatched
14 for any purpose. But as I said earlier in
15 my testimony and you asked me questions
16 about it earlier today...
17 Q.240 Yes.
18 R. ... I said that's not reasonable for
19 Quebec where you have a Hydro system so
20 that, you know, 90% odd Hydro is operating
21 and supplying a load in Quebec and the
22 cost of that Hydro is simply the cost of
23 water, you know, charging taxes to the
24 government.
25 Q.241 Okay.

1 R. So, it's not a reasonable cost. So, in
2 this market place, I believe, and FERC, I
3 believe, would agree, the reasonable
4 approach is to use opportunity costs. And
5 FERC says also on page 4 that they would
6 consider proposals to include recovery of
7 legitimate and verifiable opportunity
8 costs on a case-by-case basis. I believe
9 they certainly would accept that here
10 because of the Hydro nature of the system,
11 but they say it should not lead to over-
12 recovery of costs.

13 Our proposal tries to take the three
14 markets and come to what is the value of
15 that 10 megawatts that has been dispatched
16 by Hydro-Québec. The decisions have been
17 made by Hydro-Québec.

18 Q.242 Okay. Well, I appreciate your answer. If
19 we go back to your report on page 3, this
20 is one of the passages to which you refer
21 from the Régie's decision and I'm sure
22 that you received a translation of that.
23 The Régie says the following:

24 « La Régie considère
25 que l'utilisation d'un

1 *prix de marché*
2 *satisfait l'objectif*
3 *d'offrir une juste*
4 *compensation au*
5 *fournisseur du service*
6 *sans créer*
7 *d'opportunités*
8 *d'arbitrage pour les*
9 *clients du*
10 *Transporteur. »*

11 I think you and I agree that there is no
12 reference anywhere in that Régie's
13 decision to the notion of the last 10
14 megawatts dispatched. These words...
15 we'll come to the concept again but again,
16 these words do not appear in the Régie's
17 decision. What the Régie's decision is
18 saying is that usage of market prices
19 allows for a fair compensation. The Régie
20 uses the words « l'utilisation d'un prix
21 de marché ».

22 Do you agree with me after reading
23 that decision that there is no reference
24 to this last 10 megawatts dispatched, be
25 it the cost of the last 10 megawatt

1 dispatched or the price of the last 10
2 megawatts dispatched? There is no such
3 reference in that decision, can we agree
4 on this?

5 R. Agreed.

6 Q.243 Okay. So, on page 9 of your presentation,
7 you take the following position. You take
8 that... you take the position that:

9 « Adjacent market
10 price for the last 10
11 megawatts dispatched
12 by Hydro-Québec
13 adjusted for
14 transmission costs is
15 consistent with both
16 the FERC approach and
17 the Régie's
18 decision. »

19 That's what you say, right?

20 R. Yes.

21 Q.244 Okay. Now, we just saw that for FERC,
22 it's the cost of the last 10 megawatts
23 dispatched and you agreed that the
24 incremental cost of the last 10 megawatts
25 dispatched, according to your page 3,

1 would be unreasonable because it would be
2 zero and we discussed that already. So,
3 that's why you're not using what FERC is
4 suggesting, which is the cost or
5 incremental cost or average incremental
6 cost of the last 10 megawatts dispatched?
7 You and I agree that that wouldn't work in
8 Quebec and you say that on page 3 of your
9 report, an entire paragraph that says
10 that, it would be zero and it would be
11 unappropriate. Okay? Do you agree?

12 R. Yes, I just said that.

13 Q.245 Okay.

14 R. And that's why I said our proposal is
15 based on opportunity costs which FERC
16 would allow, but not lead to over-recovery
17 of those opportunity costs.

18 Q.246 Okay.

19 R. So, that's why we came up with a proposal
20 that is consistent with FERC principles
21 that gets to the value, the opportunity
22 value of the 10 megawatts and is
23 consistent with the Régie's decision in
24 order to use market prices.

25 Q.247 Okay. So...

1 R. So, I think the statement that I have here
2 that it's consistent with both FERC and
3 the Régie, I believe, is still true.

4 Q.248 Okay. But we dealt with FERC. FERC
5 refers to the incremental cost and you're
6 saying what you're saying and then we had
7 that discussion. Now, I'm looking at the
8 Régie.

9 The Régie is referring to the use of
10 market prices. Now, we just you and I
11 agreed that this notion of the market
12 price for the last 10 megawatts dispatched
13 are not words that we find in the Régie's
14 decisions. We agree?

15 R. I agree. No, those words are not there.

16 Q.249 Okay. So, your test, your approach is
17 based on what you wrote here:

18 « Adjacent market
19 price for the last 10
20 megawatts dispatched
21 by Hydro-Québec,
22 adjusted for
23 transmission cost. »

24 That concept is not in FERC's decision
25 because it refers to a cost and it's no in

1 the Régie's decisions because it only
2 refers to market prices. There is no
3 reference to the 10 megawatts dispatched.

4 So, it appears here, Mr. Marshall,
5 that in order to support your approach,
6 you have combined two things. You have
7 combined something you picked in FERC's
8 decision, which is the notion of a 10
9 megawatts dispatched and a notion that you
10 picked in the Régie's decision which is
11 the market price and you have assembled
12 two things, to arrive at what you are now
13 suggesting which is the market price for
14 the last 10 megawatts dispatched with the
15 kind of results that you and I find
16 totally unacceptable looking at the other
17 positions.

18 So, would you agree with me that you
19 have not used FERC's approach, you have
20 not used the Régie's approach, but for
21 whatever reason, you thought that by
22 combining concepts on both sides, you
23 could arrive at an approach which allows
24 your client to buy from the imbalance
25 service supplier energy at the lowest

1 possible price and have it sold at the
2 highest possible price. Could you explain
3 how you can reconcile these two mutually
4 exclusive concepts?

5 R. I'll try again. First of all, I don't
6 think they are contradictory at all. As
7 I said in my evidence, I have tried to
8 respect the Régie's decision in Phase 1
9 which says: Use market prices. And the
10 market prices would furnish a reasonable
11 compensation for the provider. And so, to
12 use market prices, the question was, in my
13 is: How can we use market prices to get
14 to that proper price and, at the same
15 time, let's consider that that proposal
16 would be consistent with the principles
17 that are laid down by FERC in Order 890
18 and the subsequent Orders A, B, C?

19 So, FERC clearly defined incremental
20 cost as the value of the last 10 megawatts
21 for any reason, for sales, purchases,
22 whatever.

23 I said: Well, that leads us to say
24 what's the value of that last 10
25 megawatts? And I agree, it's not the cost

1 which is near zero because it's hydro.
2 The only reasonable thing is in a hydro
3 system, is to consider the opportunity
4 value. And so, we go to the markets,
5 based on the behaviour of Hydro-Quebec and
6 find what is the market value in these
7 markets for the last 10 megawatts?

8 I don't see any contradiction here.
9 I think it's consistent with FERC
10 principles and consistent with the Régie's
11 Order.

12 Q.250 On page 4, you wrote that:

13 « *Proxy prices is an*
14 *alternative to*
15 *incremental cost*
16 *calculation.* »

17 What you've done is not use one of the two
18 alternatives. If you took half of one,
19 you combined it with the other half...

20 R. Excuse me, at page where?

21 Q.251 Page 4.

22 R. 4 of the presentation or the...

23 Q.252 Yes, PowerPoint presentation, I apologize
24 for that. On page 4 of the presentation
25 you say:

1 « Why is the
2 alternative to the
3 other, the proxy price
4 approach is an
5 alternative to the
6 incremental cost
7 calculation of the
8 last 10 megawatts
9 dispatched? »

10 Now, what I understand is you have not
11 chosen one of these two alternatives. You
12 have picked half of the first alternative
13 which is prices in the market.

14 R. Excuse me.

15 Q.253 Page 4.

16 R. Would you show me where I actually said
17 that?

18 Q.254 Page 4.

19 R. I'm on page 4.

20 Q.255 Last line:

21 « Use of market proxy
22 costs is a valid
23 alternative... »

24 R. I don't see any words « valid
25 alternative ». I say...

1 Q.256 Page 4 is a valid alternative.

2 R. Those are FERC's words. Those aren't my
3 words. Those are FERC's words and I'm
4 just simply quoting FERC.

5 Q.257 Okay. But do you disagree with what you
6 wrote on page 4?

7 R. No, no, I don't disagree at all.

8 Q.258 Okay. So, my point is as follows, you
9 took the position that:

10 « The use of market
11 proxys must represent
12 a valid alternative to
13 the incremental cost
14 calculation of the
15 last 10 megawatts. »

16 That's what FERC is saying. So, an
17 alternative is that you either, like the
18 Régie said, refer to market prices or the
19 other alternative, you refer to what FERC
20 says, which is the cost of the last 10
21 megawatts dispatched.

22 In your case, you didn't take one or
23 the other, you combined half of one and
24 half of the other. You took the market
25 price of the last 10 megawatts dispatched.

1 You took half of each. You combined them
2 to arrive at the result that you and I can
3 discuss forever, but that result appears
4 to be quite in favour of your client.

5 Me PAULE HAMELIN :

6 Je m'objecte à la question. La question a déjà été
7 posée. Il a répondu en donnant tous les *caveat* et,
8 à nouveau, mon confrère interprète ce qu'il voit
9 dans les documents à sa façon et le témoin a en plus
10 déjà répondu.

11 Alors, je m'objecte à sa formulation
12 surtout les commentaires à l'effet que c'est à
13 l'avantage de, là, ce n'est pas... je suis en
14 désaccord avec la façon dont il pose sa question et
15 ses prémisses.

16 13H36

17 Me ÉRIC DUNBERRY :

18 Q.259 My question, Mr. Marshall, is when you
19 wrote that one is the alternative of the
20 other, how can you then take half of one
21 and half of the other, which is what you
22 did on page... it's what you did on page
23 9. My understanding is that it's either
24 market prices or the incremental cost of
25 the last 10 megawatts dispatched, these

1 are the two alternatives. And what you
2 did was...

3 LE PRÉSIDENT :

4 Il me semble que, ici, Maître Dunberry, par rapport
5 à l'objection précédente, vous la reformulez
6 toujours en... votre question est exactement la même
7 prémisse que les deux questions précédentes qui ont
8 été répondues par monsieur Marshall. Et là, je ne
9 pense pas qu'on puisse aller plus loin dans un débat
10 comme ça. Ça devient un débat de compréhension
11 peut-être, tel que vous vous le comprenez. Mais
12 comme j'ai mentionné ce matin, il faut prendre la
13 réponse... une fois que vous avez posé la question,
14 le témoin y répond, il faut en tenir compte quand on
15 avance.

16 Et ici, la Régie va demander d'aller à une
17 question différente parce que vraiment les deux
18 questions précédentes la réponse a été complète et
19 le tour de table est fait et il reste vraiment à
20 entendre les argumentations. La Régie comprend que
21 vous ne serez pas d'accord avec la position finale
22 qu'il a exprimée. Le procureur d'EBM aura
23 probablement une position contraire, nous aurons à
24 trancher. Mais la question précise a déjà été
25 traitée.

1 Alors, la Régie vous inviterait à aller à
2 la question suivante.

3 Me ÉRIC DUNBERRY :

4 Q.260 As a matter of fact, do you know whether
5 Hydro-Québec Production dispatches the 10
6 megawatts? Is there a concept of dispatch
7 of 10 megawatts in Quebec given the Hydro-
8 dominated... the expression you use in
9 your report is the Hydro-dominated market
10 that Quebec has. Is there such a thing as
11 a dispatch of the last 10 megawatts? The
12 value, not the value but the cost of the
13 dispatch of the last 10 megawatts,
14 considering that that last 10 megawatts is
15 produced by water. You said that you
16 agree that if not 95%, 99%, 99.9%, I don't
17 have the exact figure, but the first to
18 the last megawatt dispatched, to use your
19 words, are produced by water.

20 So, is there such a thing as... this
21 concept of 10 megawatts dispatched, does
22 it apply in Quebec? Because I thought the
23 proxy price was the alternative to this.
24 R. Well, what would happen is Hydro-Québec
25 Production looks at all of its Hydro

1 resources, it looks at its storages, it
2 looks at its obligation to supply the
3 Heritage contract in Quebec for Hydro-
4 Québec Distribution, it looks at the
5 different markets around it, and it sets
6 a target of selling so much energy in the
7 day into each market, and it would do
8 this, you know, month ahead, week ahead,
9 day ahead. But essentially, when you get
10 down to the schedule, it would do it on a
11 day-ahead basis. And it would do it on
12 the basis of how much water it wants to
13 take out of each storage pond, which is a
14 dispatch. It's not based on the cost,
15 it's based on the value of the water and
16 the amount of water in the storages, in
17 order to meet its obligation hour by hour
18 for the next day. And as it goes to each
19 hour, it would then continue to look at
20 the market prices, it may have contracted
21 some day-ahead into different markets, and
22 then it would, as it goes into each hour,
23 would look at what the market prices
24 appear to be on a dynamic basis going into
25 the hour and it would readjust its

1 schedule every hour, ahead of the hour,
2 going into New England and New York and
3 Ontario, and account for the change in
4 load in Quebec and come up with a final
5 schedule for that hour. Well, that is a
6 dispatch.

7 Q.261 So, that would be based on the value of -
8 just coming back to the elements you
9 mentioned - that would be based on the
10 value of water? That decision-making
11 process would be based on the value of the
12 water itself I guess on the markets?

13 R. It would be based on a combination of the
14 pricing in the market, the amount of water
15 in storage, the amount of rainfall
16 projected in the weather report, in terms
17 of how much new water is going to fall,
18 how much snow melt is there going to be,
19 what is the state of the storages going to
20 be next week, tomorrow, next month, next
21 year. It looks at all of that information
22 together with the pricing in the markets
23 and says: We have got two terawatthours
24 extra that we have to sell in the next
25 week and here is where we're going to

1 target it and here is what we're going to
2 do with it.

3 So, it makes that dispatch decision
4 based on all of that information. And
5 that's why I say the price in the market
6 to which Hydro-Québec is selling, and you
7 keep saying the lowest-priced market it
8 sells to, I would like to rephrase that.
9 What it's doing is it's selling into the
10 markets to get the highest price that it
11 can possibly get for the last bit of water
12 that it actually wants to dispatch and use
13 in that hour. And that highest price is
14 the highest price available to it. If it
15 happens to be in New York and lower than
16 the New England price, that's still the
17 highest price it can get and it's the
18 opportunity value.

19 Q.262 So, what you're saying is that Hydro-
20 Québec is considering all these factors
21 and it makes a decision to buy or sell in
22 these markets based on the value of the
23 water, the value of the storage, and all
24 these other elements you mentioned, and
25 makes a decision, right?

1 R. Yes. Now, when a client decides for
2 Hydro-Québec, when a client decides by
3 accident or intentionally: Well, today,
4 I'm not going to respect my schedule or
5 today I have to recognize that something
6 happened and I cannot respect my schedule,
7 and it knocks on Hydro-Québec's door and
8 says: Today, I'm short. Today, Hydro-
9 Québec Production, I'm deciding something
10 on your behalf. In other words, instead
11 of scheduling 100 and delivering 100, I've
12 scheduled 100 and I only delivered 50. So
13 you, Hydro-Québec, and you look at all
14 that information and you make conscious
15 decisions, but today, there will be one
16 decision that you're forced to take
17 because the Tariff says so, and today, you
18 are forced to supply me with 50 megawatts
19 because I'm short by 50 megawatts.

20 That's not a Hydro-Québec decision.
21 That is a decision that is not made by
22 Hydro-Québec. Hydro-Québec Production is
23 forced to correct an imbalance. It's not
24 its decision, it's a decision which is
25 imposed on itself. So, when that happens,

1 don't you think that there is a value to
2 be recognized for the fact that it is
3 obligated to supply 50 megawatts it didn't
4 want to supply at the lowest possible
5 price in the markets to which it exports?
6 Don't you think that the loss of
7 opportunity because it is forced to make
8 a decision it would not have made
9 otherwise has to be recognized in terms of
10 opportunity cost, contemporaneous, and
11 with the value of storage?

12 R. No.

13 Me PAULE HAMELIN :

14 Monsieur le Président, encore une fois je m'objecte
15 parce qu'on repose la même et la même question. Et
16 je pense qu'on a dit clairement dès le départ qu'on
17 parlait d'un *settlement after the fact* là. Alors,
18 on revient encore avec cette notion-là.

19 Me ÉRIC DUNBERRY :

20 Je pense que le témoin a répondu, Monsieur le
21 Président, j'ai compris « non », alors...

22 LE PRÉSIDENT :

23 Très bien.

24 Me ÉRIC DUNBERRY :

25 Q.263 I have maybe one or two additional

1 questions and that will be the end for
2 this topic. It's your actual Schedule 4
3 that you're proposing.

4 R. Where is that?

5 Q.264 The Schedule 4 is an Appendix to your
6 report, Appendix A perhaps, it wasn't
7 clear when I looked at it.

8 R. Appendix B.

9 Q.265 B? It's a proposed Schedule 4 that you
10 were asking this Régie to endorse, I
11 assume?

12 R. That's correct. Well, it's a rewrite of
13 Schedules 4 and 5 consistent with my
14 proposal. So, if the Régie adopts the
15 proposal, it gives them the wording that
16 would go into the Tariff so that they
17 don't have to do the work, it's done for
18 them.

19 Q.266 And who did that, you wrote that or your
20 lawyers or someone else?

21 R. Actually, this was taken... we took the
22 FERC *pro forma* and did it. I drafted it,
23 put it together, but I did ask Michel
24 Soucy of Brookfield to check it as well.
25 So, there was some collaboration with

1 Brookfield on making sure we got this
2 consistent with the Order.

3 Q.267 So, if we take that Schedule 4, just a few
4 things I would like to confirm with you.
5 It starts by saying:

6 « *Generator imbalance*
7 *service is provided*
8 *when a difference*
9 *occurs between the*
10 *output of a generator*
11 *located in the*
12 *transmission*
13 *provider's control*
14 *area.* »

15 You removed the notion of synchronization,
16 am I right? In other words, it's not a
17 generator which is synchronized in the...
18 with TransÉnergie's system, but it is a
19 generator that is actually located within
20 the transmission provider's control area?

21 Me PAULE HAMELIN :

22 Je veux juste... je m'objecte à la question parce
23 que le témoin a référé au fait qu'il a pris les
24 Annexes 4 et 5, alors je présume qu'il a pris les
25 Annexes 4 et 5 en fonction de ce qu'elles existent

1 présentement et pas nécessairement la proposition de
2 l'OATT finalement d'HQT qui rajoute cette notion de
3 synchroniser.

4 LE PRÉSIDENT :

5 Ici, la Régie va permettre la question. Au besoin,
6 le témoin pourra expliquer pourquoi il n'a pas
7 intégré les mots « *synchronize* » qui sont proposés
8 par ailleurs au présent dossier. Donc, au témoin de
9 répondre.

10 Me ÉRIC DUNBERRY :

11 Q.268 So, Mr. Marshall?

12 R. The wording comes from the FERC *pro forma*.
13 And in the *pro forma* the words are
14 « control area », it's generators in the
15 control area. So, the transmission
16 provider, okay, in imbalance service has
17 to be procured within the control area
18 that the transmission provider is in. So,
19 this is consistent with the FERC *pro*
20 *forma*.

21 Q.269 And so you referred to transmission
22 providers. In line with our previous
23 discussion, I assume that the transmission
24 provider in the application of that
25 schedule would be Hydro-Québec Corporation

1 as you suggested earlier?

2 R. Again, my view is that the transmission
3 provider is the corporation.

4 Q.270 Right.

5 R. But the issue here in Quebec, with the
6 functional separation there, the
7 transmission provider can still be Hydro-
8 Québec TransÉnergie. They are the
9 reliability coordinator over the region
10 for the control area, and they provide the
11 transmission service within the control
12 area. The issue is for this particular
13 ancillary service, there needs to be a
14 contract between Hydro-Québec Production
15 and Hydro-Québec TransÉnergie in order to
16 provide the service.

17 Q.271 Now, if we go down, we see the paragraph
18 which starts by:

19 « To the extent the
20 control area operator
21 performs the
22 services... »

23 You see this...

24 R. Where are we here now?

25 Q.272 If you'll go down a number of lines...

- 1 R. Okay, yes, I have it.
- 2 Q.273 *Dixième ligne.* The control area operator,
3 who would that be in our case in Quebec?
- 4 R. It would be TransÉnergie.
- 5 Q.274 Okay. In this case...
- 6 R. It would the reliability coordinator
7 control centre for... which is a subpiece
8 of TransÉnergie.
- 9 Q.275 So again, based on our conversation this
10 morning, although you have nuanced it
11 right now, the control area operator,
12 according to your report and presentation,
13 would be Hydro-Québec Corporation. It
14 would be one element of that corporation?
- 15 R. I think in this case it's an element of
16 TransÉnergie.
- 17 Q.276 But TransÉnergie is to be considered as
18 only one element of the transmission
19 provider which is Hydro-Québec
20 Corporation. So, I guess all of this
21 brings us back to Hydro-Québec
22 Corporation?
- 23 R. No. Again, as I said, it's up to the
24 Régie to decide on the...
- 25 Q.277 But that is your submission?

1 R. ... the functional separation.

2 Q.278 But that is your submission?

3 Me PAULE HAMELIN :

4 Est-ce qu'on peut laisser le témoin répondre aux
5 questions, Maître Dunberry, s'il vous plaît?

6 Me ÉRIC DUNBERRY :

7 Oui.

8 Q.279 Monsieur Marshall, did you want to add
9 something? Your submission is that the
10 transmission provider is Hydro-Québec
11 Corporation, that's your submission? It's
12 in your PowerPoint presentation on page...

13 R. In the eyes of FERC, Hydro-Québec
14 Corporation is the transmission provider.

15 Q.280 So, I understand that that would be the
16 way we would be reading your Schedule 4?
17 Yes?

18 R. Yes.

19 Q.281 Okay. Now, could you tell me what this
20 means:

21 « To the extent that
22 the control area
23 operator performs his
24 service for the
25 transmission provider,

1 *charges to the*
2 *transmission customer*
3 *are to reflect only a*
4 *pass-through of the*
5 *cost charge to the*
6 *transmission provider*
7 *by that control area*
8 *operator. »*

9 You wrote that?

10 R. No, FERC wrote it.

11 Q.282 But how would that apply in Quebec?

12 R. Whatever the contract is between Hydro-
13 Québec Production and Hydro-Québec
14 Transmission that this Régie would approve
15 for the provision of the services,
16 whatever the cost is, that would be passed
17 through.

18 Q.283 And the transmission customer that causes
19 an imbalance would only pay that?

20 R. Plus or minus 10% or 25% depending on
21 which band the error was in.

22 Q.284 Okay, that's what I wanted to confirm.
23 Now, on page 2, it is said:

24 « *The transmission*
25 *provider's system is*

1 *in a net export*
2 *situation. »*

3 The current Tariff refers to receipt and
4 delivery, *des livraisons/réceptions*. So
5 we don't really have this concept in the
6 Tariff currently so I guess we would need
7 to define somewhere « net export » and how
8 to calculate the net export and the net
9 import, right? We would need to add some
10 additional language somewhere to make that
11 clear?

12 R. Yes, but it doesn't necessarily have to be
13 written right into the Tariff. It could
14 be written into the business practices, as
15 many of the other things are, where the
16 wording in the Order is given in the
17 Tariff as to how things are done and the
18 business practices specify much more
19 detail behind it as to how it's actually
20 determined. So, I think it could be
21 handled there.

22 Q.285 So, that would not be implementable in its
23 face, there would need to be some
24 additional work to define these terms and
25 how these things would be calculated

1 exactly. This morning we referred to
2 losses, we referred to HQD and all of
3 this. All of this would have to be done
4 eventually?

5 R. The work, it has to be done... There has
6 to be some implementation work done on
7 software to get the data out of OASIS and
8 to do some calculations to do the
9 settlement. And in terms of doing that,
10 you need to take the actual details of the
11 proposal. And where there may be some
12 additional information, if losses are
13 going to be considered or whether they
14 need to be considered, there is a little
15 bit of work that has to be done before the
16 programmers could go ahead and actually
17 implement the thing. And before the
18 business practices could be written with
19 the absolute detail in it.

20 But in terms of a schedule in the
21 Tariff, the wording here is consistent
22 with FERC's wording in the *pro forma*
23 Tariff and I would submit that if it's
24 good enough there for the hundreds of
25 transmission providers across North

1 America that use it, I submit it should be
2 good enough here in Quebec as well.

3 Q.286 But this entire section on imports and
4 exports, you didn't find that in FERC,
5 right?

6 R. No but we've defined it in my evidence.
7 So, I think in the Régie decision that
8 they would come out with at the end of
9 this case, they would have ample
10 opportunity to say: This is what it means
11 and this is how it is to be done. And
12 then it could be implemented that way.

13 And furthermore, if the text is not
14 exactly consistent with how the Régie sees
15 the functional separation or the parties
16 in Quebec, they could modify the text to
17 deal with the regulatory separation that
18 they feel justified.

19 Q.287 Would you also suggest that the Régie
20 amend the Act, the *Loi sur la Régie de*
21 *l'énergie*?

22 R. Again, I'm not a lawyer, but I don't think
23 they have the jurisdiction to amend the
24 Act. That's the government.

25 Q.288 Now, is your suggestion that the Régie

1 should make all these changes to your
2 Schedule on its own? Do you think that
3 the Régie should come out of this hearing
4 and propose its own Schedule 4 based on
5 what you've submitted in your evidence?

6 R. I think we've submitted enough evidence
7 that the Régie could implement this
8 wording which was also modified in
9 response to question 2.5 from the Régie.
10 So there are some modifications to this
11 Schedule that we're looking at right now
12 that were given in response to an
13 Information Request. But the Régie could
14 take this, they could modify a word or two
15 if they felt that the functional
16 separation issue is not quite as clear as
17 they would like it, they could do that.

18 And other than that, I don't think
19 they need to do anything. But they have
20 to make a decision that if they want to
21 use my proposal, and if they made that
22 decision, then they would, inherently
23 doing it, they would explain in their
24 decision what net import means and what
25 net export means and lay out this is what

1 it would be. And it would be a directive
2 then to Hydro-Québec TransÉnergie to
3 implement it on that basis. I don't see
4 the need for anymore work.

5 13H56

6 Me ÉRIC DUNBERRY :

7 Monsieur le Président, nous avons terminé. Merci.

8 LE PRÉSIDENT :

9 Merci, Maître Dunberry. Maître Hivon.

10 CONTRE-INTERROGÉS PAR Me MARIE-CHRISTINE HIVON :

11 Alors, Monsieur le Président, je tenterai d'être la
12 plus concise possible et de ne pas répéter, dans la
13 mesure du possible, ce qui aura déjà été couvert
14 hier.

15 Q.289 Good afternoon, Mr. Marshall.

16 R. Good afternoon.

17 Q.290 I would like to refer you to your report
18 dated September 28th, 2010 which is called
19 *Revised Evidence of William K. Marshall*
20 that relates to re-dispatch or conditional
21 curtailment and the requirements for
22 coordinated, open and transparent
23 transmission planning. You have that with
24 you?

25 R. The presentation or the report? Yes, I

1 have it here.

2 Q.291 The revised evidence which is, I believe,
3 your report, Mr. Marshall.

4 R. Yes, September 28th, I have it.

5 Q.292 Yes. With revision marks.

6 R. Yes, I have it.

7 Q.293 « *Further to a*
8 *modification of a*
9 *first report dated*
10 *June 10th, 2009. »*

11 I would like to refer you to page 5 of
12 that report...

13 R. Yes.

14 Q.294 ... where you mention under the heading
15 *Requirements for Coordinated, Open and*
16 *Transparent Transmission Planning Process,*
17 in the third paragraph, you mention:

18 « *The planning process*
19 *requirement applies to*
20 *all jurisdictional*
21 *transmission*
22 *providers. All*
23 *transmission owning*
24 *members of ISOs and*
25 *RTOs and through the*

1 *retention of their*
2 *reciprocity language*
3 *in the Order 888 pro*
4 *forma OATT also*
5 *applies to non-*
6 *jurisdictional*
7 *transmission*
8 *providers, including*
9 *those located in*
10 *foreign countries that*
11 *take advantage of open*
12 *access due to improved*
13 *planning. »*

14 And then, you continue mentioning:

15 « *The New Brunswick*
16 *System Operator has*
17 *undertaken action to*
18 *implement a planning*
19 *process that is*
20 *compatible with the*
21 *FERC Orders for two*
22 *reasons. And the*
23 *second reason is*
24 *meeting FERC*
25 *reciprocity*

1 *requirements would*
2 *mitigate the potential*
3 *risk of being denied*
4 *access to the New*
5 *England market for New*
6 *Brunswick market*
7 *participants. »*

8 So, I would like to review with you some
9 facts with regard to New Brunswick System
10 Operator which we call NBSO.

11 Am I right to understand that New
12 Brunswick is connected to New England in
13 the United States, to Nova Scotia, Prince
14 Edward Island, Northern Maine and Eastern
15 Maine in the United States with AC
16 interties?

17 R. Yes.

18 Q.295 And that New Brunswick is not synchronized
19 with TransÉnergie's transmission system?

20 R. There are two DC ties with TransÉnergie
21 and other than when a portion of the load
22 in New Brunswick is switched over and
23 radially supplied from Quebec, New
24 Brunswick is not synchronized with Quebec.

25 Q.296 And you're referring here to a portion

1 which will be isolated both...

2 R. Yes.

3 Q.297 ... on Quebec or on New Brunswick, but

4 never both at the same time?

5 R. That's correct.

6 Q.298 Okay. And New Brunswick is synchronized

7 with Nova Scotia, Prince Edward Island in

8 Canada and Northern Maine, Eastern Maine

9 and New England in the United States?

10 R. Yes.

11 Q.299 And NBSO is part of the Eastern

12 Interconnection?

13 R. Yes.

14 Q.300 Okay. And it is synchronized to it?

15 R. Yes.

16 Q.301 The NBSO's balancing area includes Prince

17 Edward Island and Northern and Eastern

18 Maine.

19 R. And New Brunswick, yes.

20 Q.302 Yes. And NBSO, as the transmission system

21 operator for the jurisdictions we've just

22 mentioned, which is New Brunswick, Nova

23 Scotia, Prince Edward Island, Northern and

24 Eastern Maine, is a member of the ISO RTO

25 Council, which is a group of all the ISOs

1 and RTOs...

2 R. Yes.

3 Q.303 ... in North America?

4 R. That's correct.

5 Q.304 Okay. I would like to show you a map of
6 the ISO RTO Council. Do you agree with me
7 that this map shows the ISOs and RTOs in
8 North America as they are reproduced here?

9 R. Yes.

10 Q.305 And New Brunswick system operator is
11 there?

12 R. Yes.

13 Q.306 As we see ISO New England, New York, PJM,
14 SPP, ERCOT, California ISO, Alberta
15 Electric System Operator, Midwest ISO and
16 the Ontario ISO?

17 R. Yes.

18 Q.307 Okay. I would like to file this document
19 as B-236.

20 PIÈCE B-236 :

21 Map of the ISO RTO Council.

22 Me MARIE-CHRISTINE HIVON :

23 Q.308 Am I right to understand that, for
24 Northern Maine to have access to the other
25 U.S. markets in the Eastern

1 Interconnection, it has to go through New
2 Brunswick?

3 R. Yes.

4 Q.309 It cannot access the rest of the United
5 States except through a New Brunswick
6 conduit as we may say?

7 R. Yes, it is radially connected to New
8 Brunswick, both Northern and Eastern Maine
9 and as such form part of the Maritimes
10 control area of NPCC and part of the
11 reliability coordinator footprint of NBSO.

12 Q.310 I would like to refer you to page 12 of
13 your report under the sub-section
14 *Reciprocity Provisions of FERC Orders*.
15 And I would like to confirm some aspects
16 of the reciprocity conditions with you.
17 You know Section 6 of the *pro forma* OATT,
18 Mr. Marshall?

19 R. Yes.

20 Q.311 Have you had the occasion to review this
21 section before?

22 R. Yes.

23 Q.312 So, would you agree with me that the
24 obligation under a Section 6 of an OATT is
25 an obligation by the transmission customer

1 seeking access of the transmission
2 provider system that has such a Section 6?

3 R. That's correct.

4 Q.313 Okay. And that the criteria under Section
5 6 is whether the affiliates of the
6 transmission customer provides comparable
7 transmission service on similar terms and
8 conditions?

9 R. That's correct and that's why Hydro-Québec
10 U.S. in its filings with FERC for its
11 Market-Based Rate setting capability in
12 the United States files with FERC that HQT
13 is its affiliate and the obligation is on
14 HQT to provide reciprocal access in order
15 to access the United States.

16 And FERC, in its Orders, accepting
17 HQUS' filings and providing it with that
18 power market authorization has said
19 clearly that while it's not interested in
20 regulating...

21 Q.314 Mr. Marshall...

22 R. ... Quebec or overseeing the Régie, it
23 clearly wants reciprocity for power from
24 competitors from the affiliate to be able
25 to access into and out of the United

1 States.

2 Q.315 Mr. Marshall...

3 R. That reciprocity requirement is on HQT.

4 Q.316 Mr. Marshall, that was not my question.

5 My question was, on Section 6 and you
6 refer me to the Market-Based
7 Authorization, is it for you the same
8 thing?

9 R. No, Section 6...

10 Q.317 Okay, so Section 6... we reviewed Section
11 6. And you referred me to... you referred
12 us to documentation that is not part of
13 this report. Right?

14 R. I think it's very important what I
15 clarify. Section 6...

16 Q.318 My question...

17 R. Section 6...

18 Q.319 Mr. Marshall...

19 R. You asked me about Section 6, I'd like to
20 talk about Section 6.

21 Me PAULE HAMELIN :

22 Vous voulez... Non, excusez, là.

23 Me MARIE-CHRISTINE HIVON :

24 Je m'excuse, Monsieur le Président, mais le témoin
25 utilise une question sans y répondre en référant à

1 un sujet qui est totalement à l'extérieur de son
2 rapport, référant à de la documentation ou à des
3 informations qui ne sont pas dans son rapport.
4 Alors, je pense qu'ici, si on veut terminer ce
5 contre-interrogatoire, le témoin devrait écouter la
6 question et y répondre simplement.

7 Me PAULE HAMELIN :

8 Monsieur le Président, la question a été posée... la
9 première question qui a été posée, c'était en
10 fonction d'un transmission customer. La réponse a
11 été donnée. Il a donné l'exemple de HQUS, d'accord?

12 Me MARIE-CHRISTINE HIVON :

13 Non, ce n'est pas ce qu'il a fait, Maître Hamelin.

14 Me PAULE HAMELIN :

15 Mais écoutez, est-ce que je peux finir mes
16 représentations, s'il vous plaît? Vous répondrez
17 ensuite. Je vous remercie. Alors, d'une part, ça,
18 c'est un.

19 Et ensuite, la question qui a été posée,
20 c'est vous me répondez en fonction de ça et la
21 question que je vous posais c'était en fonction de
22 l'article 6.

23 Le témoin est venu pour répondre et on lui
24 a coupé la parole. Alors, je pense que... et elle
25 a demandé: Pourquoi vous me répondez ça quand je

1 pose la question sur l'article 6? Elle a elle-même
2 invité la question, il répondait.

3 Alors, et ensuite, on lui coupe la parole.
4 Alors, je m'objecte à cette façon-là de faire.

5 Me MARIE-CHRISTINE HIVON :

6 Monsieur le Président, ma question était au
7 témoin... ma question était: Je vous ai posé une
8 question sur l'article 6 et vous me répondez sur le
9 Market-Based Rate Authorization. Est-ce que pour
10 vous, pour vous, est-ce que c'est la même chose?
11 C'était ça la question.

12 LE PRÉSIDENT :

13 Un instant.

14 Alors, la Régie permet la question et il
15 est vrai que, habituellement, le témoin doit
16 répondre à la question telle que posée. Par contre,
17 un témoin peut aussi exprimer s'il a des nuances à
18 apporter par rapport à la question qui lui est
19 formulée, bien, on doit laisser l'opportunité au
20 témoin de donner ses nuances, quitte à demander à ce
21 qu'elles ne soient pas prises en compte plus tard
22 mais je pense qu'on ne peut pas non plus bloquer
23 systématiquement la possibilité pour le témoin de
24 qualifier sa réponse.

25 Et quant aux interventions ou objections

1 et discussions avec le témoin, la Régie demande un
2 peu la bonne collaboration de tout le monde dans la
3 salle, de tous les procureurs et des témoins
4 également pour assurer un débat harmonieux.

5 Alors, Maître Hivon.

6 Me MARIE-CHRISTINE HIVON :

7 Merci, Monsieur le Président.

8 Q.320 So, Mr. Marshall, when I referred you
9 earlier to Section 6 of the *pro forma*
10 OATT, you answered me with respect to a
11 notion or issue relating to Market-Based
12 Authorization, my question is, for you is
13 it the same concept, is it the same thing,
14 the same obligation?

15 R. Well, they are not the same thing but they
16 are related.

17 Q.321 Okay.

18 R. And you asked me about Section 6 in the
19 Hydro-Québec tariff. Section 6 in the
20 Hydro-Québec tariff and in the *pro forma*
21 tariff, the obligation is on the customer
22 to provide reciprocity. The obligation is
23 not on HQT in its own tariff. But where
24 the obligation flows back is that when
25 Hydro-Québec US takes service under a

1 tariff in the United States, Section 6 in
2 that tariff puts the obligation on Hydro-
3 Québec US to provide reciprocity.

4 And in procuring its power marketing
5 authorization license from FERC, it's
6 obligated to file, you know, show that
7 it's not doing vertical market power, that
8 it's not doing horizontal market power
9 and, in terms of doing that, FERC have
10 ruled in those hearings that reciprocity
11 is required, even for Canadian utilities,
12 particularly for the ones at the border,
13 for transactions going into Canada and out
14 of Canada that the affiliate of HQUS
15 provides comparable open access
16 transmission for competitors to Hydro-
17 Québec to access the system.

18 So, that is the obligation in Section
19 6 on HQUS.

20 Q.322 For you, Mr. Marshall, to meet this
21 reciprocity condition under Section 6 of
22 the *pro forma*, FERC *pro forma* OATT for a
23 transmission provider, what are the
24 possibilities or the alternatives to meet
25 this Section 6 reciprocity conditions?

1 R. There are three ways that FERC have laid
2 out to meet the reciprocity requirement.
3 They can get a waiver from the utilities,
4 they can do a bilateral arrangement or
5 they can file with FERC for a safe harbour
6 treatment of the tariff.

7 Q.323 So, what you just mentioned earlier in
8 your answer, you did not take into
9 consideration these three alternatives?

10 R. Well, no, they do. I will submit that
11 when HQUS in its filings with FERC may
12 have stipulated and there is evidence in
13 this hearing about some of their filings
14 with FERC, that they will provide FERC
15 with updated information on this process.
16 They've informed FERC last June of the
17 schedule that has been laid out by the
18 Régie to proceed with this hearing and
19 they have committed to providing the
20 results of this hearing and the tariff of
21 TransÉnergie for the FERC to see. And
22 they have to use that in order to show
23 they don't have vertical market power in
24 order to maintain their license.

25 Me MARIE-CHRISTINE HIVON :

1 Alors, Monsieur le Président, je peux indiquer tout
2 de suite que je ferai des représentations à l'effet
3 de ne pas tenir compte de plusieurs aspects des
4 réponses de monsieur Marshall qui sont une façon
5 d'introduire de la preuve à ce stade-ci du dossier
6 et je vais m'objecter et je vais m'objecter
7 également si telle était l'intention des procureurs
8 d'EBMI à tout réinterrogatoire sur les réponses
9 données plutôt que sur les questions posées faisant
10 l'objet du contre-interrogatoire.

11 Me PAULE HAMELIN :

12 Alors, j'aurai certainement des représentations à
13 faire parce que ma consœur pose des questions au
14 témoin.

15 Alors, ce qu'il vient de répondre, selon
16 moi, est en preuve. C'est elle-même qui a introduit
17 les questions et on traite de toute la question de
18 réciprocité dans le cadre de ce dossier-ci et
19 l'expert a également fait référence à des documents
20 qui sont produits au dossier puis qui réfèrent à
21 toute cette notion.

22 Alors, j'aurai également des
23 représentations à faire et elle introduit elle-même
24 la preuve qu'elle demande ensuite de retirer.

25 Me MARIE-CHRISTINE HIVON :

1 Monsieur le Président, je n'ai pas fait référence à
2 HQUS. Je n'ai pas fait référence à TransÉnergie.
3 J'en étais au concept de la réciprocité et je pense
4 que tout est dans les notes et on pourra faire les
5 représentations entre la différence entre la
6 question posée et la réponse fournie.

7 LE PRÉSIDENT :

8 Alors, la Régie entendra évidemment les
9 représentations lorsqu'elles seront faites, si elles
10 sont faites et quant à des questions en
11 réinterrogatoire, on verra s'il y en a un et si cela
12 porte là-dessus. S'il y a des objections, la Régie
13 les entendra.

14 Me MARIE-CHRISTINE HIVON :

15 Évidemment.

16 Q.324 You will agree with me, Mr. Marshall, that
17 TransÉnergie is not a public utility in
18 the U.S.?

19 R. That's correct.

20 Q.325 And TransÉnergie is not a domestic public
21 utility in the U.S.?

22 R. Correct.

23 Q.326 When I read your report and during your
24 testimony in chief, you have not referred
25 to Section 211-A of the Federal Power Act.

1 Is that correct?

2 R. That's correct.

3 Q.327 I understand that you did not take this
4 section into consideration in your
5 analysis of the issue of reciprocity in
6 the present case?

7 R. No, because FERC in Order 697 says that
8 the requirement for foreign utilities to
9 provide reciprocity, they're going to
10 ignore section 211-A.

11 14H15

12 Q.328 So your answer is no, you did not take
13 that...

14 R. Yes.

15 Q.329 ... into consideration?

16 R. I did not take it into consideration
17 because FERC don't take it into
18 consideration.

19 Q.330 I refer you to page 13 of your report.

20 R. Yes, I have it.

21 Q.331 Second paragraph, you mention:

22 « The key points in
23 paragraph 191 are that
24 reciprocity is
25 required and that a

1 *foreign transmission*
2 *provider like HQT and*
3 *NBSO only meets the*
4 *reciprocity*
5 *requirement when its*
6 *Tariff has provisions*
7 *that substantially*
8 *conform or are*
9 *superior to the*
10 *revised pro forma*
11 *OATT. »*

12 Am I right to understand that for you New
13 Brunswick System Operator, NBSO, and
14 TransÉnergie are the same with respect to
15 the reciprocity requirement?

16 R. Yes.

17 Q.332 And that they should treat reciprocity
18 requirement the same way?

19 R. Well, they just have to meet the
20 reciprocity requirement, yes.

21 Q.333 And that in FERC's eyes, for you, based on
22 your opinion, the application of
23 reciprocity condition to HQT TransÉnergie
24 would be the same as New Brunswick System
25 Operator?

1 R. I think so. I mean, and I can add a
2 little to that. I mean, in my evidence
3 and in the presentation, I referred to the
4 case of Integrys and NB Power, the
5 complaint of Integrys Energy against NB
6 Power in supplying Northern Maine. And
7 the decision of FERC came down on that
8 case just in early... either... I think it
9 was at the very end of March this year.

10 And in that decision, they accepted
11 NB Power's position, but FERC ruled that
12 NB Power Generation is to file in the New
13 Brunswick Tariff, to continue to inform
14 FERC as how that Tariff proceeds through
15 its changes in front of the regulator in
16 New Brunswick. And when it's finished, to
17 actually file that Tariff with FERC. And
18 all of that is part of New Brunswick Power
19 Generation's obligations under its power
20 marketing authorization.

21 So, FERC... they're putting that
22 obligation on NB Power Generation because
23 they have an American subsidiary. They
24 put the same obligation on HQUS in terms
25 of filing that information.

1 Q.334 So, for you, and you refer here to the
2 decision of Integrys, regarding FERC's
3 decision on Integrys, what FERC decided in
4 that case with respect to New Brunswick
5 could rule the same thing with respect to
6 TransÉnergie and HQUS affiliate?

7 R. No, I'm saying that the decision that FERC
8 make relative to that case just indicates
9 it is interested in the Tariff in New
10 Brunswick and it wants to see it relative
11 to Order 890. And it's my supposition
12 that based on HQUS's filing with FERC, who
13 have committed to provide the Tariff
14 following approval here by the Régie to
15 FERC, FERC are going to want to look at it
16 as well.

17 Q.335 We will come back to this decision. I'm
18 still on page 13 of your report. You
19 refer to a June 2010 Notice of Proposed
20 Rulemaking by FERC. I would like to just
21 recognize that document and to complete
22 the file I would like to file it as B-237.

23 PIÈCE B-237 :

24 June 2010 NOPR by FERC.

25 Me MARIE-CHRISTINE HIVON :

1 Q.336 So, is this, Mr. Marshall, the document
2 you refer to in your report on page 13?

3 R. Yes.

4 Q.337 You can put that aside and we will come
5 back to it. On page 14 of your report, in
6 the first full paragraph, in the middle of
7 the paragraph, you mention that... you
8 refer to Attachment K and you mention:

9 « If no such planning
10 process is
11 implemented, then
12 affiliates and market
13 participants of HQT
14 run the risk of being
15 denied open
16 transmission access to
17 United States markets
18 and also potentially
19 to Canadian markets in
20 Ontario and New
21 Brunswick. »

22 With respect to the risk of being denied
23 open transmission access to Canadian
24 markets in Ontario and New Brunswick, are
25 you referring to the reciprocity

1 requirement under FERC Order 890?

2 R. Yes, there is a reciprocity requirement in
3 providing that access. And I would say
4 it's... just as Hydro-Québec refused New
5 Brunswick reciprocity back in 2000 when
6 the New Brunswick Tariff first came out as
7 a through-and-out tariff but didn't
8 include access in the province, Hydro-
9 Québec saw it as discriminatory and
10 refused access of New Brunswick Power into
11 the Hydro-Québec grid. And I'm saying
12 that on the grounds that it didn't provide
13 reciprocal access, if this Tariff doesn't
14 provide reciprocal access, tit for tat,
15 somebody could reverse the situation and
16 refuse to provide access. It's simply a
17 risk.

18 Q.338 Are you extending FERC Order 890 Order,
19 the requirements in FERC Order 890 to
20 purely intra-Canadian activities? Is that
21 what you're saying?

22 R. No, I'm saying that if New Brunswick
23 continues through its process and updates
24 its Tariff to become 890 compatible Open
25 Access Transmission Tariff and Hydro-

1 Québec doesn't, as a result of this
2 hearing that it's clearly deficient in
3 different ways, the reciprocity provision
4 in the Tariff would enable New Brunswick
5 to say, you know: You, HQ Production, are
6 a customer, HQ Marketing, you're a
7 customer of ours in New Brunswick, but
8 your affiliate in Quebec isn't providing
9 reciprocal access to the same terms that
10 you agreed to so we're going to block you.
11 Now, I think it's highly unlikely that
12 that would happen, but that's the point of
13 reciprocity in these Tariffs. That's what
14 the whole concept of reciprocity is. It's
15 that you agree by taking service in one
16 territory that your transmission provider
17 affiliate will provide comparable service
18 in your own territory. And if it's not
19 comparable, you have the right to deny
20 them access. That's the risk.

21 Q.339 So, what you just described are in fact
22 purely intra-Canadian activities?

23 R. It could be, yes.

24 Q.340 At the bottom of page 14, you refer to the
25 decision of the Régie D-2002-095. Have

1 you read that decision in totality or only
2 extracts?

3 R. It's a big decision. As a matter of fact,
4 it was provided here earlier today I
5 think.

6 Q.341 The whole decision?

7 R. To look at. I believe it was.

8 Me PAULE HAMELIN :

9 Attendez, je pense qu'il ne vous comprenait pas. Il
10 dit qu'on lui a remis aujourd'hui, c'étaient des
11 questions de votre collègue, la décision D-2002-095.
12 Alors, je ne sais pas si c'était ça votre question,
13 mais je pense qu'il y avait une incompréhension.

14 Me MARIE-CHRISTINE HIVON :

15 Q.342 So, you have looked at some paragraphs
16 that maître Dunberry indicated to you to
17 ask you questions on some extracts of the
18 decision this morning. Is that what you
19 just referred to?

20 R. Yes, I referred to the fact that I believe
21 it was the entire decision that was given
22 to me and then we referred to some
23 extracts from it. But I had looked at the
24 decision prior to that. I was a witness
25 for NB Power in the hearings and I was

1 here in 2001. And so I looked at the
2 results of that decision when it came out.
3 Q.343 So, you have read maybe years ago that
4 decision D-2002-095?

5 R. Yes.

6 Q.344 I would like to come back to the June 2010
7 NOPR from FERC that we just identified and
8 that was filed under the number B-237.
9 And you refer again to that Notice of
10 Proposed Rulemaking on page 8 now of your
11 report.

12 I have a very simple question for you
13 on that document. Do you agree that, in
14 this NOPR of June 2010, FERC is addressing
15 other aspects of the transmission planning
16 further to its Order 890?

17 R. It's dealing with cost allocation, not
18 just planning, so yes, there's a lot on
19 cost allocation too.

20 Q.345 And my other question was whether it also
21 discussed cost allocation issues?

22 R. Yes, it does. So, it's more than
23 planning, okay?

24 Q.346 But cost allocation is also mentioned in
25 FERC Order 890 under the transmission

1 planning discussion, do you agree with me?

2 R. Yes, it is, it's one of the nine
3 principles, that the cost allocation be
4 identified as to how costs would be
5 allocated so customers can understand.

6 Me MARIE-CHRISTINE HIVON :

7 Monsieur le Président, je vois l'heure, je sais que
8 vous aviez indiqué que la Régie souhaitait suspendre
9 à 14 h 30.

10 LE PRÉSIDENT :

11 Oui, 14 h 30.

12 Me MARIE-CHRISTINE HIVON :

13 J'allais aborder un nouveau sujet alors je...

14 LE PRÉSIDENT :

15 Donc, ce serait un bon moment pour ajourner à
16 demain, 9 h 00.

17 Me MARIE-CHRISTINE HIVON :

18 Oui, merci.

19 AJOURNEMENT AU 11 MAI 2011 À 9H00.

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1 Je, soussignée, DENISE TURCOT, sténographe
2 officielle bilingue, certifie sous mon serment
3 d'office que les pages qui précèdent sont et
4 contiennent la transcription fidèle et exacte de mes
5 notes, le tout conformément à la loi.

6
7 Et j'ai signé,

8
9
10 _____
11 DENISE TURCOT

12 Sténographe officielle bilingue
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