

**TESTIMONY OF PHILIP RAPHALS ON THE
TRANSMISSION PLANNING PROCESS**

ENGLISH TRANSLATION

(answer R12.1)

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

[...]

9 Planning process

9.1 Background

The new *pro forma* OATT attached to the orders includes an Attachment K outlining the transmission provider's planning process. This Attachment K must include sufficient detail to enable transmission customers to understand:

1. the process for consulting;
2. the notice procedures and anticipated frequency of meetings;
3. the methodology, criteria, and processes used to develop transmission plans;
4. the method of disclosure of criteria, assumptions and data underlying transmission system plans;
5. the obligations and methods for customers to submit data to the transmission provider;
6. the dispute resolution process;
7. the transmission provider's study procedures for economic upgrades to address congestion or the integration of new resources;
8. the relevant cost allocation procedures or principles¹.

Hydro-Québec TransÉnergie (referred to as the "Transmission Provider") is of the opinion that these requirements are primarily aimed at overcoming deficient investment in transmission infrastructure in the United States². The Transmission Provider posits that given the regulatory framework in Québec, sufficient investment and the absence of congestion, there is no need to add a planning process to the *Hydro-Québec OATT*. It considers that the "situation in Québec is markedly different from that in the United

¹ Order 890, *pro forma*, Attachment K, Original Sheets 162 and 163.

² HQT-1, doc. 1, p. 13 [Also at page 13 in English version of HQT-1, doc. 1. Footnote 39 in original French document.]

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
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States, which has prompted FERC to require transmission providers under its authority append an attachment K to their OATT." In addition,

The Transmission Provider considers that the regulatory structure in place in Québec as well as the physical, economic and organizational characteristics in the province dispel concerns with respect to undue discrimination in the planning of the grid, as they are addressed in paragraph 435³. (Emphasis added.)

The Transmission Provider also argues that the absence of an attachment K "does not affect the reciprocity requirement⁴." It would be advisable for the Transmission Provider to clarify, at the outset of the hearing, what it means by "reciprocity requirement".

9.2 *FERC's objectives*

In paragraph 425 of Order 890, FERC explains that the "lack of coordination, openness and transparency results in opportunities for undue discrimination⁵". The Transmission Provider explains its understanding of this excerpt as follows:

R6.3 The Transmission Provider does understand FERC's remark in the context prevailing in the United States and summarizes its scope on pages 13 and 14 in HQT-1, Document 1. Many transmission providers in an interconnection characterized by congestion and zones with variable prices can well result in situations where diverging economic interests are likely to result in potential risks of discrimination. Those benefitting from congestion can be interested in seeing transmission investment projects fail. In this context, an open and more formal coordination can reduce the potential for discrimination and in particular promote the carrying-out of transmission investment projects when the lack of transmission infrastructure results in disproportionate price differences between consumers. However, as stated in Transmission Provider's evidence (HQT-1,

³ HQT-8, doc. 6, p. 18 (Transmission Provider's response to information request by RNCREQ and UC.)

⁴ HQT-8, doc. 3, p. 6.

⁵ "Taken together, this lack of coordination, openness, and transparency results in opportunities for undue discrimination in transmission planning. Without adequate coordination and open participation, market participants have no means to determine whether the plan developed by the transmission provider in isolation is unduly discriminatory." [Footnote 44 in original French document.]

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
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Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

Document 1, pages 14 ff.), the situation in Québec is markedly different and does not call for the remedial measures proposed by FERC.

The Transmission Provider also believes that the "physical, economic and organizational characteristics in the province of Québec dispel" these concerns.

The Transmission Provider's interpretation is thus that FERC's main concern is that in situations where "many transmission providers in an interconnection characterized by congestion and zones with variable prices", "those benefitting from congestion can be interested in seeing transmission investment projects fail."

This, in our view, is a wrongful interpretation of Order 890. Read as a whole, this section clearly indicates that the discrimination at issue is assuredly not that of one transmission provider wishing to see transmission projects fail when they are likely to reduce the benefits he may collect as a result of congestion. **Rather**, the issue is **discrimination supporting sales of electricity by an affiliate**, as evidenced by the underlined portions of paragraphs 422 to 424:

422. We do not believe that the existing pro forma OATT is sufficient in an era of increasing transmission congestion and the need for significant new transmission investment. We cannot rely on the self-interest of transmission providers to expand the grid in a non-discriminatory manner. Although many transmission providers have an incentive to expand the grid to meet their state-imposed obligations to serve, they can have a disincentive to remedy transmission congestion when doing so reduces the value of their generation or otherwise stimulates new entry or greater competition in their area. For example, a transmission provider does not have an incentive to relieve local congestion that restricts the output of a competing merchant generator if doing so will make the transmission provider's own generation less competitive. A transmission provider also does not have an incentive to increase the import or export capacity of its transmission system if doing so would allow cheaper power to displace its higher cost generation or otherwise make new entry more profitable by facilitating exports. (Emphasis added.)

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

423. As the Commission explained in Order No. 888, "[i]t is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves."[note omitted] The court agreed on review of Order No. 888, noting in TAPS v. FERC that "[u]tilities that own or control transmission facilities naturally wish to maximize profit. The transmission-owning utilities thus can be expected to act in their own interest to maintain their monopoly and to use that position to retain or expand the market share for their own generated electricity, even if they do so at the expense of lower-cost generation companies and consumers."[note omitted] The Supreme Court in New York v. FERC similarly explained that "public utilities retain ownership of the transmission lines that must be used by their competitors to deliver electric energy to wholesale and retail customers. The utilities' control of transmission facilities gives them the power either to refuse to deliver energy produced by competitors or to deliver competitors' power on terms and conditions less favorable than those they apply to their own transmissions."[note omitted] (Emphasis added.)

424. The existing pro forma OATT does not counteract these incentives in the planning area because there are no clear criteria regarding the transmission provider's planning obligation. Although the pro forma OATT contains a general obligation to plan for the needs of their customers, there is no requirement that the overall transmission planning process be open to customers, competitors, and state commissions. [note omitted] Rather, transmission providers may develop transmission plans with limited or no input from customers or other stakeholders. There also is no requirement that the key assumptions and data that underlie transmission plans be made available to customers. (Emphasis added.)

425. Taken together, this lack of coordination, openness, and transparency results in opportunities for undue discrimination in transmission planning. Without adequate coordination and open participation, market participants have no means to determine whether the plan developed by the transmission provider in isolation is unduly discriminatory. This means that disputes over access and discrimination occur primarily after-the-fact because there is insufficient coordination and transparency between transmission providers and their customers for purposes of planning. [note omitted] The Commission has a duty to prevent undue discrimination in the rates, terms, and conditions of public utility transmission service and, therefore, an obligation to remedy these transmission planning deficiencies. (Emphasis added.)

On this basis, it becomes clear that **the regulatory framework in Québec as well as the physical, economic and organizational characteristics in the province in no way**

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

dispel concerns about undue discrimination. To the contrary, incentives remain for the Transmission Provider to unduly discriminate in order to benefit the marketing affiliates of its parent company, as described by the Court of Appeals and the Supreme Court of the United States in paragraph 423 cited above.

Thus, the Transmission Provider's arguments in no way diminish the authority in FERC's main finding:

Commission Determination

435. In order to limit the opportunities for undue discrimination described above and in the NOPR, and to ensure that comparable transmission service is provided by all public utility transmission providers, including RTOs and ISOs, the Commission concludes that it is necessary to amend the existing pro forma OATT to require coordinated, open, and transparent transmission planning on both a local and regional level. [...] (Emphasis added.)

It is possible of course to modify FERC's specific requirements for Attachment K to reflect the specific situation in Québec, where the institutional and regulatory framework is markedly different from that prevailing in the United States. However, in our opinion, FERC's analysis of the potential discrimination resulting from a planning process that is neither open nor transparent is very relevant in our context.

In the following subsections, we review the main components in FERC's requirements.

9.2.1 Coordination

FERC requires that planning meetings be held between transmission providers, neighboring transmission providers, state authorities, transmission customers and other stakeholders, without prescribing a specific form for meetings or their frequency. The clear objective is to open lines of communication in order to eliminate the potential for undue discrimination.

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

a. Coordination

445. In the NOPR, the Commission proposed that transmission providers must meet with all of their transmission customers and interconnected neighbors to develop a transmission plan on a non-discriminatory basis [...] (Emphasis added.)

Commission Determination

451. The Commission adopts the coordination principle proposed in the NOPR. Commenters overwhelmingly desire flexibility as to the coordination principle, and as such, we will not prescribe the requirement for coordination, such as the minimum number of meetings to be required each year, the scope of the meetings, the notice requirements, the format, and any other features. We will allow transmission providers, with the input of their customers and other stakeholders, to craft coordination requirements that work for those transmission providers and their customers and other stakeholders. (Emphasis added.)

452. We emphasize that the purpose of the coordination requirement is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. Rigid and formal meeting procedures may be one way to accomplish this goal, but there may be other ways as well. For example, a transmission provider could meeting this requirement by facilitating the formation of a permanent planning committee made up of itself, its neighboring transmission providers, affected state authorities , customers, and other stakeholders. Such a planning committee could develop its own means of communication, which may or may not emphasize formal meeting procedures. We are more concerned with the substance of coordination than its form.

9.2.2 Openness

FERC clearly requires that the transmission planning process be open and inclusive while stressing the importance of developing, again in cooperation with affected parties, the appropriate mechanisms to protect confidential information and national security, such as confidentiality agreements and password-protected access to information.

**PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS**

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

Commission Determination

460. The Commission adopts the NOPR's proposal and will require that transmission planning meetings be open to all affected parties including, but not limited to, all transmission and interconnection customers, state commissions and other stakeholders. We recognize that it may be appropriate in certain circumstances, such as a particular meeting of a subregional group, to limit participation to a relevant subset of these entities. We emphasize, however, that the overall development of the transmission plan and the planning process must remain open. We agree with the concerns of some commenters that safeguards must be put in place to ensure that confidentiality and CEII concerns are adequately addressed in transmission planning activities. Accordingly, we will require that transmission providers, in consultation with affected parties, develop mechanisms, such as confidentiality agreements and password-protected access to information, in order to manage confidentiality and CEII concerns. (Emphasis added.)

9.2.3 Transparency

As mentioned above, FERC requires that transmission providers disclose to transmission customers and other affected parties the criteria, assumptions and data underlying transmission system plans, as well as up-to-date information on various additions and modifications and the related plans and studies.

FERC has also determined that when non-generation sources can provide functions assessed in a planning process, ancillary services for example, the potential suppliers should be permitted to participate in this process, just as other customers and affected parties.

Commission Determination

471. The Commission adopts the NOPR's proposal and will require transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans. In addition, transmission providers will be required to reduce to writing and make available the basic methodology, criteria, and processes they use to develop their transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. This information should enable customers,

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

other stakeholders, or an independent third party to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. We note, however, that transmission providers cannot be expected to fulfil these planning obligations unless non-public utility transmission providers that participate in the planning process make similar information available and, for the reasons set forth above, we fully expect that they will do so. We believe that the same safeguards developed as discussed above regarding the openness principle, such as confidentiality agreements and password-protected access to information, will adequately protect against inappropriate disclosure of confidential information or CEII. (Emphasis added.)

472. The Commission also requires that transmission providers make available information regarding the status of upgrades identified in their transmission plans in addition to the underlying plans and related studies. It is important that the Commission, stakeholders, neighboring transmission providers, and affected state authorities have ready access to this information in order to facilitate coordination and oversight. To the extent any such information is confidential or consists of CEII, the transmission provider can implement the safeguards suggested above. (Emphasis added.)

[...]

479. Finally, several commenters assert that demand response resources should be considered in transmission planning. [note omitted] Some commenters note that certain regions currently are in the process of incorporating demand response into their transmission planning processes. [note omitted] Demand resources currently provide ancillary services in some regions, and this capability is in under development in some others. [note omitted] We therefore find that, where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis. [note omitted] This is consistent with EAct section 1223. (Emphasis added.)

9.2.4 Information exchange

In the NOPR, FERC proposed that customers be required to submit information on their future needs. It also proposed that market participants be allowed to review and comment draft transmission plans.

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

Finally, FERC clarifies in paragraph 488 that the objective is to provide transmission customers and affected parties the opportunity to engage in planning with the transmission providers and not only to access basic information.

d. Information exchange

480. In the NOPR, the Commission proposed that network transmission customers be required to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. The Commission further proposed that point-to-point customers be required to submit any projections they have of a need for service over that planning horizon and at what receipt and delivery points. The Commission sought comment on whether specific requirements should be adopted for this information exchange. [note omitted] The Commission also stated that transmission providers must allow market participants the opportunity to review and comment on draft transmission plans. (Emphasis added.)

[...]

Commission Determination

486. The Commission adopts the information exchange principle as to both network and point-to-point transmission customers. Accordingly, we will require transmission providers, in consultation with their customers and other stakeholders, to develop guidelines and a schedule for the submittal of information. In order for the Final Rule's planning process to be as open and transparent as possible, the information collected by transmission providers to provide transmission service to other native load customers must be transparent and, to that end, equivalent information must be provided by transmission customers to ensure effective planning and comparability. We clarify that the information must be made available at regular intervals to be identified in advance. Information exchanged should be a continual process, the frequency of which should be addressed in the transmission provider's compliance filing required by the Final Rule. However, we expect that the frequency and planning horizon will be consistent with ERO requirements. (Emphasis added.)

487. We also believe that it is appropriate to require point-to-point customers to submit any projections they have of a need for service over the planning horizon and at what receipt and delivery points. We believe that any good faith projections of a need for service, even though they may not yet be subject to a transmission

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

reservation, may be useful in transmission planning as they may, for example, provide planners with likely scenarios for new generation development. If the point-to-point customers do not submit such projections, then the transmission provider cannot later be faulted for failing to consider planning scenarios that might have taken into account reasonable projections of future system uses that were not the subject of specific service requests. To the extent applicable, transmission customers also should provide information on existing and planned demand resources and their impacts on demand and peak demand. In addition, stakeholders should provide proposed demand response resources if they wish to have them considered in the development of the transmission plan. (Emphasis added.)

488. Lastly, in response to the concerns of some commenters, we emphasize that the transmission planning required by this Final Rule is not intended, as discussed earlier, to be limited to the mere exchange of information and then review of transmission provider plans after the fact. The transmission planning required by this Final Rule is intended to provide transmission customers and other stakeholders a meaningful opportunity to engage in planning along with their transmission providers. At the same time, we emphasize that this information exchange relates to planning, not other studies performed in response to interconnection or transmission service requests. (Emphasis added.)

9.2.5 Comparability

FERC requires that equal treatment be given to the interests of transmission providers (and implicitly those of their affiliates) and those of their customers. It requires, amongst others, that when appropriate, non-generation resources and traditional resources be given equal treatment.

Commission Determination

494. The Commission adopts the NOPR's proposal as to the comparability principle and will require the transmission provider, after considering the data and comments supplied by customers and other stakeholders, to develop a transmission system plan that (1) meets the specific service requests of this transmission customers and (2) otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. [note omitted] Further, we agree with commenters that customer demand resources should be considered on a comparable basis to the service provided by comparable generation resources where appropriate. (Emphasis added.)

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

495. We are specifically requiring a comparability principle to address concerns, such as those raised by commenters, that transmission providers continue to plan their transmission systems such that their own interests are addressed without regard to, or ahead of, the interests of their customers. Comparability requires that the interests of transmission providers and their similarly-situated customers must be treated on a comparable basis. In response to the concerns expressed by several commenters, we emphasize that similarly-situated customers must be treated on a comparable basis, not that each and every transmission customer should be treated the same. [note omitted]

(Emphasis added.)

9.3 *Observations*

As early as in our expert testimony in file R-3401-98 filed in February 2001, we raised the issue of participation of affected parties in planning processes, by summarizing the procedures already in place in many jurisdictions (California, Alberta, PJM, New England and New York)⁶. Each of them had a planning process in place which was open, to varying degrees, to the participation of affected parties.

The following excerpt summarizes these processes:

10.3.2 Stakeholder involvement in transmission planning processes

[Please refer to excerpt, provided in English, on pages 36-37 of Mr. Raphals' testimony.]

This excerpt demonstrates that the open and transparent processes now required by FERC from all transmission providers under its jurisdiction were already included, to a large extent, in the procedures of the most advanced transmission providers. The new element added by Order 890 is that such a process is essential to avoid undue discrimination.

⁶ Raphals, Bradford and Disher, see note 1, pages 71 to 81. [Footnote 49 in original French document.]

PARTIAL UNOFFICIAL TRANSLATION OF TESTIMONY
ON TRANSMISSION PLANNING PROCESS

Philip Raphals
R-3669-2008 – Phase 2
for RNCREQ and UC

Modification of *Hydro-Québec OATT*
based on Order 890
Testimony revised on June 15, 2009

In our opinion, a process similar to the one required by FERC would entail real benefits for the regulation of transmission service in Québec.

We therefore recommend to the Régie that a debate be initiated among the Transmission Provider, its customers and affected parties on the appropriate form for an open and transparent planning process, as FERC requires from transmission providers under its jurisdiction.

[...]