

134 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Integrys Energy Services, Inc.

v.

Docket Nos. EL09-32-001
EL09-32-002

New Brunswick Power Generation Corporation

New Brunswick Power Generation Corporation

ER08-1439-001
ER08-1439-002

ORDER ACCEPTING COMPLIANCE FILING, DENYING REHEARING,
TERMINATING COMPLAINT PROCEEDING, AND DIRECTING FURTHER
FILINGS

(Issued March 29, 2011)

1. In this order, the Commission accepts a horizontal market power study submitted by New Brunswick Power Generation Corporation (NBP Generation) in compliance with a Commission order issued on June 10, 2009 and directs further compliance filings.¹ In addressing Integrys Energy Services, Inc.'s (Integrys) February 2, 2009 complaint against NBP Generation (Complaint), the Commission in the June 10 Order directed NBP Generation to submit a horizontal market power study for the New Brunswick System Operator (NBSO) balancing authority area. In the instant order, the Commission denies NBP Generation's request for rehearing and clarification of the June 10 Order. As discussed below, the Commission concludes that NBP Generation satisfies the Commission's standards for market-based rate authority in the NBSO balancing authority area. Accordingly, the Complaint filed in Docket No. EL09-32-000 is hereby dismissed and the proceeding is terminated. Finally, based upon its representations, we find that

¹ *Integrys Energy Services, Inc. v. New Brunswick Power Generation Corp.*,
127 FERC ¶ 61,232 (2009) (June 10 Order).

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Régie de l'énergie
DOSSIER: R-3669-2008
DÉPOSÉE EN AUDIENCE Phase 2
Date: 20/04/2011
Pièces n°: NON COTÉE

Régie de l'énergie
DOSSIER: R-3669-2008
PIÈCE NO: C-6-108-EB7
Date: 20/04/2011

Phase 2

Docket No. EL09-32-001, *et al.*

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NBP Generation meets the criteria for a Category 2 seller in the Northeast region and is so designated.²

I. Background, Notice of Filings, and Responsive Pleadings

2. NBP Generation is a Canadian corporation wholly owned by the New Brunswick Power Holding Corporation, which is owned by the New Brunswick Electric Finance Corporation, an agent of the crown. NBP Generation and its affiliate NB Power Nuclear Corporation own 16 generating facilities with an installed capacity of 3,879 MW in the NBSO balancing authority area. NBP Generation's affiliate, NB Power Transmission Corporation (NBP Transmission), owns transmission lines in New Brunswick, Canada, which are directly interconnected with ISO New England Inc. (ISO New England) and northern Maine. NBP Generation is also affiliated with NB Power Distribution and Customer Service Corporation (NBP Distribution).³

3. NBP Transmission's lines are administered by the NBSO, a non-profit crown corporation that operates independently from NBP Generation and its affiliates (including NBP Transmission).⁴ The NBSO is responsible for, among other things, the independent administration of the NBSO balancing authority area and the NBSO Open Access Transmission Tariff (OATT).⁵ NBP Generation states that as is the case with

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

³ Pursuant to the New Brunswick Electricity Act S.N.B. 2003, as amended, the former New Brunswick Power Corporation was reorganized into a holding company with four subsidiary operating companies (NBP Generation, NB Power Nuclear Corporation, NB Power Transmission Corporation, and NBP Distribution).

⁴ NBP Generation's Application for Market-Based Rate Authority, Docket No. ER08-1439-000, at 5 (filed August 22, 2008).

⁵ The NBSO is responsible for maintaining the reliability of the NBSO-controlled grid; facilitating the operation of a competitive electricity market; procuring and providing ancillary services; working with responsible authorities outside New Brunswick to coordinate NBSO activities; and controlling the transmission interfaces between New Brunswick and ISO New England. *Id.*

Independent System Operators and Regional Transmission Organizations in the United States, the NBSO is required by law to provide non-discriminatory, open access to the transmission grid in New Brunswick and the New Brunswick- ISO New England interface. NBP Generation states that the NBSO accomplishes this through the administration of a single system tariff, the NBSO OATT. The NBSO has an independent board of directors and is regulated by the New Brunswick Energy and Utilities Board (New Brunswick Regulatory Board). NBP Generation represents that the NBSO is not an affiliate of either NBP Generation or NBP Transmission as the term is used in the market-based rates context. Although all three entities are New Brunswick crown entities, the NBSO has no board members in common with NBP Generation or its affiliates and, by law, the NBSO is required to operate independently of NBP Generation and its affiliates.⁶

4. When NBP Generation applied for market-based rate authorization in Docket No. ER08-1439-000 on August 22, 2008, it submitted a horizontal market power analysis, including the pivotal supplier and wholesale market share indicative screens, for the ISO New England market, to demonstrate that it does not possess market power in that market.⁷ NBP Generation also submitted a copy of the NBSO OATT.

5. In its Complaint, Integrys asserted that when NBP Generation filed its August 22, 2008 request for market-based rate authorization it failed to submit a horizontal market power analysis for the NBSO balancing authority area, despite it owning generation in that balancing authority area.⁸ The NBSO balancing authority area is partially in Canada and partially in Maine in the United States. Specifically, the NBSO balancing authority area includes the Canadian Provinces of New Brunswick and Prince Edward Island, as well as a portion of Maine, whose transmission system is administered by the Northern Maine Independent System Administrator, Inc. (Northern Maine ISA).⁹

⁶ *Id.* at 5 n.13.

⁷ The ISO New England market is a first-tier market to the NBSO balancing authority area.

⁸ NBP Generation received market-based rate authorization on October 6, 2008. *New Brunswick Power Generation Corp.*, Docket No. ER08-1439-000 (Oct. 6, 2008) (delegated letter order) (October 6, 2008 Order).

⁹ See June 10 Order, 127 FERC ¶ 61,232 at 4; North American Electric Reliability Council 2006 Reliability Readiness Audit Report, *available at* http://www.nerc.com/docs/rap/audits/NBSO_Readiness_Audit_Final_Report.pdf. The Northern Maine ISA is an independent system administrator and regional transmission group that encompasses the transmission systems of utilities in the northern-most part of (continued...)

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6. In its Complaint, Integrys argued that, until NBP Generation submits the appropriate information showing that it does not possess market power in the NBSO balancing authority area,¹⁰ NBP Generation must be deemed to have horizontal market power and should not be authorized to engage in market-based rate transactions. Integrys requested that the Commission order NBP Generation to cease any sales in that portion of Maine where the Northern Maine ISA administers transmission systems and electric power markets until it obtains explicit Commission authorization to do so. Integrys also raised allegations of vertical market power.

7. In the June 10 Order, the Commission agreed with Integrys that, pursuant to Order No. 697, NBP Generation was required to provide a horizontal market power analysis for the NBSO balancing authority area.¹¹ As the Commission explained in the June 10 Order, while NBP Generation owns generation only in the Canadian portion of the NBSO balancing authority area, for purposes of market-based rate authorization, the NBSO balancing authority area is a relevant geographic market.¹² Accordingly, the Commission granted the Complaint in part and directed NBP Generation to submit such an analysis.¹³

Maine. Northern Maine includes portions of Aroostook, Washington and Penobscot Counties in Maine.

¹⁰ We note that the pleadings in this proceeding often refer to the Maritimes control area. At one time, the entire Maritimes region was in a single control area but, after the North American Electric Reliability Corporation (NERC) reorganized reliability functions, the region was split into two balancing authority areas (the NBSO balancing authority area and the Nova Scotia balancing authority area). The NBSO provides balancing control for the NBSO balancing authority area and separate balancing occurs in Nova Scotia. See Integrys' September 9, 2009 Protest, Morris Affidavit at 10. Therefore, we clarify that our analysis does not focus on the Maritimes control area.

¹¹ Order No. 679, FERC Stats. & Regs. ¶ 31,252 at P 278.

¹² June 10 Order, 127 FERC ¶ 61,232 at P 23.

¹³ To the extent that Integrys, in its Complaint, challenged NBP Generation's authority to make retail sales in northern Maine, the Commission dismissed the Complaint as beyond the Commission's jurisdiction. The Commission noted that, pursuant to section 201(a) of the FPA, it has jurisdiction over the "transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce." 16 U.S.C. § 824(a) (2006). See June 10 Order, 127 FERC ¶ 61,232 at P 21 & n.23.

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8. On July 10, 2009, NBP Generation filed a request for rehearing of the June 10 Order, which is summarized below.

9. On August 10, 2009, NBP Generation submitted a horizontal market power study for the NBSO balancing authority area in compliance with the June 10 Order.¹⁴ NBP Generation's horizontal market power study included the pivotal supplier and market share indicative screens and a Delivered Price Test (DPT) study, which used Simultaneous Transmission Import Limit (SIL)¹⁵ study values.

10. Notice of NBP Generation's August 10, 2009 compliance filing was published in the *Federal Register*,¹⁶ with interventions or protests due on or before September 9, 2009. The Northern Maine ISA filed a timely motion to intervene in Docket No. ER08-1439-002.

11. On September 9, 2009, Integrys filed a protest arguing that NBP Generation possesses horizontal market power and that NBP Generation's horizontal market power analysis is flawed.¹⁷ Integrys also argues that NBP Generation possesses vertical market power and, among other things, questions whether Attachment M to the NBSO OATT, which provides procedures for customers seeking to utilize what is referred to as the "MEPCO Reservation" (188 MW of transmission capacity), in fact constitutes open access.

12. On September 24, 2009, NBP Generation filed an answer to Integrys' September 9, 2009 Protest. NBP Generation argues that Integrys fails to substantiate a number of claims, presents irrelevant data, and makes assumptions without factual support.

13. On September 29, 2009, the Maine Public Utilities Commission (Maine Commission) filed a motion to intervene in Docket No. ER08-1439-002 and an answer to

¹⁴ In addition to submitting a study for the NBSO balancing authority area, NBP Generation studied the Maritimes control area. However, for the reasons discussed herein, our analysis focuses on the NBSO balancing authority area.

¹⁵ The SIL study is required as a basis for transmission access for both the indicative screens and the DPT analysis. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 384.

¹⁶ 74 Fed. Reg. 42,066 (2009).

¹⁷ Integrys' September 9, 2009 Protest at 1, 4.

Integryst's September 9, 2009 Protest.¹⁸ On October 15, 2009, Integryst filed an answer to the Maine Commission's September 29, 2009 filing.

14. On October 16, 2009, staff acting under delegated authority, requested additional information from NBP Generation (October 16, 2009 Request). Specifically, staff requested information pertaining to NBP Generation's DPT, the SIL study values used in that DPT, along with additional information about NBP Generation's representations concerning the NBSO OATT.

15. On November 9, 2009, NBP Generation submitted a response to the October 16, 2009 Request (November 9, 2009 Filing). Notice of NBP Generation's November 9, 2009 Filing was published in the *Federal Register*,¹⁹ with interventions or protests due on or before November 30, 2009. On November 30, 2009, Integryst filed a protest arguing that NBP Generation's market power analysis continues to be deficient.²⁰

16. On January 15, 2010, staff requested additional information from NBP Generation (January 15, 2010 Request), finding that the November 9, 2009 Filing was not fully responsive to the October 16, 2009 Request. Specifically, staff requested that NBP Generation provide a revised SIL study and a revised DPT with appropriate SIL values calculated from the relevant study period (December 2005-November 2006) for the NBSO balancing authority area.

17. On March 31, 2010, NBP Generation submitted a response to the January 15, 2010 Request, which included a revised DPT analysis that used transmission import capability values from the relevant study period (March 31, 2010 Filing).

18. Notice of NBP Generation's March 31, 2010 Filing was published in the *Federal Register*,²¹ with interventions or protests due on or before April 21, 2010.

¹⁸ The Maine Commission states that the Commission's determination with regard to NBP Generation's market power analysis should not impair NBP Generation's ability to meet the Northern Maine ISA market rules to meet a balanced schedule for energy and capacity obligations. We note that this order does not need to address the Maine Commission's filing, since we are not revoking NBP Generation's market-based rate authority.

¹⁹ 74 Fed. Reg. 61,342 (2009).

²⁰ Integryst's November 30, 2009 Protest at 5.

²¹ 75 Fed. Reg. 18,493 (2010).

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19. On April 21, 2010, Integrys filed another protest reiterating that NBP Generation has not complied with the Commission's direction.²² Integrys stated that NBP Generation's DPT analysis still fails to address the flaws that Integrys identified in its September 9, 2009 Protest.

20. On July 30, 2010, Integrys filed a motion requesting that the Commission expeditiously issue an order revoking the market-based rate authorization of NBP Generation or impose mitigation for its activities in the portion of northern Maine administered by the Northern Maine ISA.

II. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the Northern Maine ISA's timely, unopposed motion to intervene and the Maine Commission's notice of intervention serve to make them parties to this proceeding.²³

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by NBP Generation, the Maine Commission, and Integrys because they have provided information that assisted us in our decision-making process.

B. Analysis

23. Integrys argues that NBP Generation's horizontal market power analysis is flawed, that NBP Generation has not submitted the required information, and that it possesses horizontal market power. Integrys also argues that NBP Generation possesses vertical market power and, among other things, questions whether procedures in the NBSO OATT allow for open access transmission service.

24. As discussed more fully below, we reject Integrys' horizontal and vertical market power claims as unsubstantiated and conclude that NBP Generation has complied with the Commission's requirements for the grant of market-based rate authority.

²² Integrys' April 21, 2010 Protest at 1.

²³ We note that the Northern Maine ISA and the Maine Commission were already parties to the proceeding in Docket No. EL09-32-000.

1. Market-Based Rate Authorization

25. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal, and vertical market power.²⁴

a. Horizontal Market Power

26. After receiving Integrys' complaint, and in order to investigate more fully whether NBP Generation had horizontal market power in the NBSO balancing authority area, the Commission directed NBP Generation to submit preliminary indicative market power screens. As noted above, in addition to providing those studies, NBP Generation on its own elected to also file a DPT study.

i. Indicative Screens

27. For purposes of obtaining market-based rate authorization, the NBSO balancing authority area is a relevant geographic market for NBP Generation.²⁵ Although NBP Generation's generation assets are all located in the Canadian part of the NBSO balancing authority area, it seeks market-based rate authorization for jurisdictional power sales in the United States, which includes the part of the NBSO balancing authority area located in northern Maine. It is therefore required to study the entire NBSO balancing authority area. In response to the Commission's direction in its June 10 Order, NBP Generation prepared the pivotal supplier and wholesale market share indicative screens for the NBSO balancing authority area. It failed the wholesale market share screen with market shares ranging by season from 26.7 percent to 34.1 percent. NBP Generation also voluntarily submitted a revised DPT analysis for the NBSO balancing authority area.

ii. Delivered Price Test

28. As the Commission has previously explained, the DPT identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

²⁵ June 10 Order, 127 FERC ¶ 61,232 at P 23. For traditional markets (i.e., non-regional transmission organization and non-independent system operator markets), a seller's default relevant geographic market is first, the balancing authority area where the seller is physically located (in this case, the NBSO balancing authority area), and second, the markets directly interconnected to the seller's balancing authority area. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232.

each supplier's economic capacity and available economic capacity²⁶ for each season/load period.²⁷ Under the DPT, applicants must also calculate market concentration using the Hirschman-Herfindahl Index (HHI).²⁸ A showing of an HHI less than 2,500 in the relevant market for all season/load periods for sellers that have also shown that they are not pivotal and do not possess a 20 percent or greater market share in any of the season/load periods would constitute a showing of a lack of market power, absent compelling contrary evidence from intervenors.

29. As with the indicative screens, applicants and intervenors may present evidence such as historical wholesale sales data, which can be used to calculate market shares and market concentration and to refute or support the results of the DPT.

30. NBP Generation's revised DPT uses an import capability into the NBSO balancing authority area ranging from 1,600 MW to 1,864 MW of simultaneous total transfer capability (TTC) during the 2005-2006 study period. NBP Generation's DPT analysis for the NBSO balancing authority area indicates that, when the available economic capacity measure is used, NBP Generation is not a pivotal supplier during any of the season/load periods.²⁹ In addition, NBP Generation's HHIs range from 1,329

²⁶ "Economic capacity" is the total generation capacity of all the suppliers that can compete in the destination market, given their costs and transmission availability. "Available economic capacity" is derived by subtracting each supplier's native load obligation from its total capacity and adjusting transmission availability accordingly. *See AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at Appendix F (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004); *see also* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.78.

²⁷ Super-peak, peak, and off-peak, for winter, shoulder, and summer periods and an additional highest super-peak for the summer.

²⁸ The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market, $HHI = (20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$.

²⁹ The Commission's analysis herein focuses on NBP Generation's revised DPT analysis in its March 31, 2010 Filing. NBP Generation's revised DPT analysis was performed for the correct relevant geographic market (i.e., the NBSO balancing authority area) and used transmission import data from the correct study period (December 2005 to November 2006). NBP Generation's revised DPT analysis correctly used simultaneous TTC values from the December 1, 2005 to November 30, 2006 study period. NBP Generation's revised DPT analysis results differ only slightly from the results it

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to 1,883. The DPT analysis also indicates that NBP Generation's market shares are below 20 percent during all season/load periods except during the winter-off peak season/load period when its market share is 23.4 percent.

31. NBP Generation claims that, during this season/load period, loads are relatively low while generation is relatively plentiful and elastic in supply. NBP Generation states that a 20 percent market share during the winter-off peak overstates or does not accurately represent its market share because NBP Generation is required, even if it is not economic to do so, to operate a portion of its higher incremental cost, oil-fired 972 MW Coleson Cove facility during that season/load period. It explains that it must operate this facility during the winter-off peak season/load period so that it can accept oil deliveries and allow the oil pipeline serving the facility to continue to operate for reliability reasons. Such required operation, NBP Generation claims, causes the entire output of the Coleson Cove facility to be treated in the DPT as economic during the winter off-peak for the available economic capacity measure. NBP Generation asserts that, while Coleson Cove may operate in off-peak periods in order to be available in higher load time periods, the actual value of energy during these time periods was below the facility's incremental cost. Further, it maintains that the HHI level in the winter off-peak season/load period is 1,609, indicating a moderately concentrated market, and also that NBP Generation is not pivotal. In sum, NBP Generation contends that a single market share above 20 percent during an off-peak season/load period is not demonstrative of any market power concern.³⁰

32. With regard to the economic capacity measure, NBP Generation's results indicate that it is a pivotal supplier during six season/load periods with HHIs above 2,500 in those same six season/load periods. It has market shares above 20 percent during all season/load periods. NBP Generation defends its failure of the economic capacity measure by arguing that this measure fails to take into account an entity's native load obligations which, in the case of load serving entities like NBP Generation's affiliate NBP Distribution, are significant.³¹

submitted in its August 10, 2009 Filing, which used simultaneous TTC values from an earlier time period.

³⁰ NBP Generation's August 10, 2009 Filing, Arenchild Affidavit at 12.

³¹ NBP Generation's August 10, 2009 Filing at 6.

iii. Responsive Pleadings Addressing Horizontal Market Power

33. Integrys complains that NBP Generation's horizontal market power analysis is flawed, that NBP Generation possesses market power in the relevant market, and therefore submits that NBP Generation's market-based rate authority must be revoked.³² Integrys asserts that NBP Generation's actual market behavior proves that its DPT results are not economically plausible. Integrys argues that NBP Generation's DPT analysis is flawed because it: (1) overestimates the import capability from the Hydro-Quebec balancing authority area into the NBSO balancing authority area; (2) fails to account for firm reservations across interfaces; (3) incorrectly allocates import capability to competitors; and (4) improperly accounts for generation capacity from NBP Generation's Coleson Cove facility and its hydro-facilities. Integrys argues that, when it adjusts NBP Generation's DPT to account for some of these issues, NBP Generation's market shares are significantly above 20 percent and HHIs are significantly above 2,500 for the available economic capacity measure.

34. Integrys also argues that NBP Generation's failure to supply a SIL study renders its market power study deficient.³³ It states that NBP Generation's analysis does not conform to Commission requirements for simultaneous import limits.

35. In its April 21, 2010 Protest, Integrys argues that even in its March 31, 2010 Filing NBP Generation still has not complied with the Commission's request to submit a SIL study that corresponds with a revised DPT. Integrys claims that NBP Generation has not submitted the required information because such information would show that NBP Generation cannot meet the Commission's horizontal market power standards. Integrys notes that NBP Generation's response submits TTC values rather than the required SIL values in its revised DPT analysis. Integrys also states that NBP Generation's revised DPT analysis does not address the flaws Integrys identified in its initial protest.

³² Integrys' September 9, 2009 Protest at 1.

³³ Integrys' November 30, 2009 Protest. Integrys argues that, among other things, NBP Generation's market power analysis does not conform to the Commission's SIL requirements because it relies upon data three years prior to the appropriate study period. As explained above, this issue is no longer relevant because, on March 31, 2010, NBP Generation submitted simultaneous TTC values, in lieu of a SIL study, with a revised DPT analysis that used data from 2005-2006, the relevant study period.

iv. Commission Determination Regarding Horizontal Market Power

36. As discussed below, the Commission concludes that NBP Generation satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the NBSO balancing authority area and has complied with the requirements of Order No. 697 as well as our previous directives in this proceeding.

37. The Commission has previously explained that failure of either the economic capacity or available economic capacity measure in a DPT analysis alone does not result in an automatic finding of market power. In particular, the Commission has recognized that not all generation capacity is always available to compete in wholesale markets and that accounting for native load requirements is warranted.³⁴ As we explained in Order No. 697, available economic capacity accounts for native load requirements:

[I]n markets where utilities retain significant native load obligations, an analysis of available economic capacity may more accurately assess an individual seller's competitiveness, as well as the overall competitiveness of a market, because available economic capacity recognizes the native load obligations of the sellers. On the other hand, in markets where the sellers have been predominantly relieved of their native load obligations, an analysis of economic capacity may more accurately reflect market conditions and a seller's relative size in the market.³⁵

38. Because NBP Generation's affiliate, NBP Distribution, has significant native load obligations in the NBSO balancing authority area, we find that the available economic capacity measure of the DPT more accurately captures conditions in the relevant market. As discussed below, using the available economic capacity measure in its DPT analysis, NBP Generation has shown that it is not pivotal, has less than a 20 percent market share in 9 of 10 season/load periods, and does not exceed the 2,500 HHI threshold in any of the 10 season/load periods.

(a) Total Transfer Capability Values

39. While Integrys claims that NBP Generation failed to meet the Commission's requirements by submitting TTC values rather than the requisite SIL study, we disagree.

³⁴ April 14 Order, 107 FERC ¶ 61,018 at P 67.

³⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 112.

In its March 31, 2010 Filing, NBP Generation complied with the Commission's directive by providing simultaneous TTC values and supporting documentation, in accordance with Order No. 697. In that order, the Commission explained that the use of simultaneous TTC values is consistent with the SIL study provided that such values are used in operating the transmission system and posting availability on the Open Access Same-Time Information System (OASIS).³⁶ The simultaneous TTC values, which include a seller's balancing authority area and aggregated first-tier areas, must represent more than interface constraints at the balancing authority area border and must reflect all transmission limitations within the study area and limitations within first-tier areas. The source (first-tier remote resources) can only deliver power to load in the seller's balancing authority area if adequate transmission is available out of its first-tier area, adequate transmission is available at the seller's balancing authority area interface, and transmission is internally available. Thus, the TTC values must be appropriately adjusted for all applicable firm transmission commitments held by affiliated companies that represent transfer capability not available to first-tier supply. The Commission stated that sellers submitting simultaneous TTC values must provide evidence that these values account for simultaneity, account for all internal transmission limitations, account for all external transmission limitations existing in first-tier areas, account for all transmission reliability margins, and are used in operating the transmission system and posting availability on OASIS.³⁷

40. We find that NBP Generation's submitted TTC values meet the requirements discussed in Order No. 697 for allowing the use of simultaneous TTC values in lieu of a SIL study.³⁸ NBP Generation has provided hourly TTC values, over the study period, for each of the first-tier areas, and states that these same hourly TTC values were used while operating the transmission system and posting availability on OASIS, and because there were no applicable transmission reservations, no adjustments to these hourly TTC values were required. NBP Generation further states that these same hourly TTC values represent more than interface constraints at the balancing authority area border and reflect all transmission limitations within the study area as well as the first-tier area. In addition, NBP Generation has provided evidence that its simultaneous TTC values were calculated by summing each of the first-tier balancing authority areas' hourly TTC value for the same season/load period.³⁹ Therefore, we find that NBP Generation has provided

³⁶ *Id.* P 364.

³⁷ *Id.*

³⁸ *Id.*

³⁹ The first-tier balancing authority areas to the NBSO balancing authority area are not directly interconnected with each other.

sufficient evidence that its submitted simultaneous TTC values account for simultaneity, account for transmission limitations within the study area and first-tier areas, and account for net area interchange for firm reservations. We are satisfied by NBP Generation's submittal of simultaneous TTC values, which the Commission will accept in lieu of a SIL study. NBP Generation's revised DPT and work papers support its use of an import capability into the NBSO balancing authority area ranging from 1,600 MW to 1,864 MW of simultaneous total transfer capability during the relevant 2005-2006 study period.

(b) Infeasibility of DPT Results

41. Integrys' broad argument regarding the economic infeasibility of the DPT results is rejected. Integrys asserts that NBP Generation is able to "procure rights to serve additional load in northern Maine" and, as such, NBP Generation must have preferential access to energy supplies not measured as available economic capacity in its DPT.⁴⁰ However, Integrys has not explained how rights to serve *load* somehow equate to access to energy *supplies*. Furthermore, Integrys has failed to define what it means by "procure rights to serve additional load." If by "rights" Integrys is referring to transmission reservations, it is mistaken in its claim that the DPT fails to accurately reflect transmission reservations to serve load, because all of a seller's transmission reservations are reflected in the DPT.⁴¹ Thus, in this respect Integrys' argument appears to be a collateral attack on the validity of the DPT generally. In summary, Integrys' claim is unsubstantiated because it failed to identify which, if any, such rights NBP Generation was able to procure, or otherwise demonstrate why the DPT results are not economically plausible.

(c) Import Capability (Overestimation, Firm Reservations, Pro-Rata Allocation)

42. Integrys argues that NBP Generation's *initial* DPT analysis fails to account for an accurate import capability from Hydro-Quebec, firm reservations across interfaces, and a correct pro-rata allocation of transmission capacity among NBP Generation's competitors.⁴² Integrys further claims that when it makes adjustments to correct for these

⁴⁰ Integrys' September 9, 2009 Protest, Morris Affidavit at 10.

⁴¹ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 364, 369; *see also* April 14 Order, 107 FERC ¶ 61,018 at Appendix F & n.217.

⁴² In its April 21, 2010 Protest, Integrys, despite NBP Generation's revised DPT which used simultaneous TTC values from the relevant study period and included supporting documentation, effectively only incorporated by reference its arguments made in its September 9, 2009 Protest. Integrys did not explain how its claims against the initial SIL values used by NBP Generation in its August 10, 2009 DPT remain relevant to
(continued...)

errors, NBP Generation's market shares under the available economic capacity measure are above 20 percent, ranging from 29.1 percent to 41 percent, during five of 10 season/load periods, and the HHI market concentrations are above 2,500 during four of those season/load periods.⁴³ For the reasons discussed below, we disagree with each of Integrys' adjustments to NBP Generation's DPT.

43. First, Integrys argues that the import capability values used by NBP Generation in its initial DPT analysis overestimate the transmission transfer capability into the NBSO balancing authority area. Integrys states that imports from Hydro-Quebec to the NBSO balancing authority area are typically more limited than the 1,135 MW in the summer and shoulder seasons or the 1,200 MW during the winter season used by NBP Generation in its initial DPT analysis. Integrys argues that the more accurate import capability from Hydro-Quebec to the NBSO balancing authority area would be 716 MW, which is the TTC. Integrys argues that NBP Generation should not count the potential 295 MW import capability from the two alternating current (AC) interconnections between Hydro-Quebec and the NBSO balancing authority area because these AC interconnections can transfer power to New Brunswick only when the New Brunswick transmission system enters a radial mode, at which time the NBSO disconnects load from the main New Brunswick transmission system and serves that load radially from the Quebec system. Integrys argues that, because the decision to switch to radial mode resides with NBP Generation and the transfer capability is not available to other users of the New Brunswick transmission system, NBP Generation should not treat those potential 295 MW of transfer capability as available.

44. NBP Generation states that Integrys points to a 2009-2010 NBSO report to state that there is zero TTC for this radial usage. NBP Generation notes that such information is not consistent with the 2005-2006 relevant study period. Furthermore, NBP Generation states that it has no control over the operation of the radial transmission between New Brunswick and Quebec, and that such authority lies solely with the NBSO and its counterparty in Quebec.⁴⁴

45. We are not persuaded by Integrys' assertion that NBP Generation should treat as unavailable 295 MW of transfer capability potentially resulting when the New Brunswick transmission system enters a radial mode. Integrys has failed to substantiate its claim, with information from the relevant study period, that NBP Generation controls the

a DPT which relies on different transmission import capability values, derived from a different study, and from a different study period.

⁴³ Integrys' September 9, 2009 Protest, Morris Affidavit at 12-13.

⁴⁴ NBP Generation's September 24, 2009 Answer at 7.

operation of the radial transmission between New Brunswick and Quebec. Moreover, Integrys provided no evidence that NBSO has operated the transmission system to restrict access to Integrys, or in an otherwise unduly discriminatory or preferential manner.

46. Integrys also submits that NBP Generation's allocation of import capability into the NBSO balancing authority area is flawed because it did not take into account firm reservations across interfaces. Integrys asserts that, had NBP Generation accounted for firm reservations, only 216 MW of transfer capability would be left to allocate to suppliers.⁴⁵ However, according to NBP Generation, based on NBSO's historical information, during the 2005-2006 relevant study period, NBP Generation and its affiliates had no monthly or long-term transmission reservations into the NBSO balancing authority area.⁴⁶ Thus, NBP Generation would have had no way to deny access to competing suppliers, including Integrys, across these transmission interfaces. We therefore disagree with Integrys' claim. NBP Generation accounted for firm reservations by using historical TTC values from NBSO's OASIS, thereby requiring no additional adjustments to the TTC values.

47. Integrys also claims that NBP Generation incorrectly assumes that imports from Quebec can be modeled as power coming from three independent suppliers, which has the effect of underestimating NBP Generation's market HHI. According to Integrys, this is inappropriate because Hydro-Quebec owns or controls 80 percent of the generation capacity in Quebec. As such, Integrys contends that NBP Generation, under the Commission's pro-rata allocation, should have allocated 80 percent of the available import capability to Hydro-Quebec.

48. Integrys has failed to submit a power flow analysis or other supporting evidence to substantiate its claim that NBP Generation incorrectly allocated import capability among competitors from Quebec. Therefore, we dismiss as unsupported that claim.

(d) Coleson Cove Facility and Hydro-Facilities

49. Integrys maintains that, if NBP Generation's generation plant Coleson Cove Unit 1 is a must-run unit year-round, then NBP Generation would have market shares above 20 percent in 9 out of 10 season/load periods under the available economic capacity measure of its DPT. Integrys does not argue or show that NBP Generation's Coleson Cove Unit 1 is a must-run unit year-round. NBP Generation explains that the Coleson Cove Unit 1, an oil-fired facility, is not a must-run unit year-round, but that during the

⁴⁵ Integrys' September 9, 2009 Protest, Morris Affidavit at 11.

⁴⁶ NBP Generation's March 31, 2010 Filing, TTC DATA Comparison and Reservations work sheet. NBP_3_31_2010.XLS.

very cold weather in January and February, a minimum amount of generation at Coleson Cove must be operated so that it can accept oil deliveries and allow the oil pipelines serving the facility to continue to operate.⁴⁷

50. NBP Generation has properly accounted for the Coleson Cove facility in its DPT analysis by reflecting that it must appear as a must-run unit during January and February when a portion of the unit must remain in operation to ensure the reliability of the facility. We reject Integrys' unsupported assumption and speculation of market shares under the scenario where the Coleson Cove facility is treated as a must-run unit year-round. NBP Generation confirmed that the Coleson Cove facility is not a must-run unit year round.

51. Integrys also states that, if NBP Generation's hydro-electric facilities have the ability to store water (pondage), NBP Generation's market shares would be higher during peak periods because NBP Generation would have greater generation capability in peak periods than it assumed in its DPT. NBP Generation clarified that its hydro-electric facilities are primarily run-of-the-river resources, which by definition have very limited pondage capabilities.⁴⁸

(e) Conclusion

52. The Commission concludes that, on balance, NBP Generation's revised DPT analysis rebuts the presumption of horizontal market power and satisfies the Commission's horizontal market power standard for the grant of market-based rate authority in the NBSO balancing authority area. As noted above, using the available economic capacity measure in its DPT analysis, NBP Generation has less than a 20 percent market share in 9 of 10 season/load periods. While NBP Generation's market share is 23.4 percent during the winter off-peak season/load period, when it must run its oil-fired 972 MW Coleson Cove facility, it does not exceed the 2,500 HHI threshold in any of the 10 season/load periods and it is not a pivotal supplier in any season/load periods. We thus conclude that on balance and after weighing the evidence under all three of the measures (market share, market concentration, and whether the seller is pivotal), as well as the additional evidence and arguments presented by the parties as

⁴⁷ NBP Generation's September 24, 2009 Answer at 9, NBP Generation's August 10, 2009 Filing at 12.

⁴⁸ NBP Generation's September 24, 2009 Answer at 10.

discussed above, NBP Generation satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.⁴⁹

b. Vertical Market Power

53. As described above, in its Complaint, Integrys argued that, until NBP Generation submits the appropriate information showing that it does not possess market power in the NBSO balancing authority area, the Commission should order NBP Generation to cease market-based rate sales in the market administered by Northern Maine ISA, which is one of the areas included in the NBSO balancing authority area. As discussed below, the Commission concludes that NBP Generation satisfies the Commission's vertical market power standard for the grant of market-based rate authority in the NBSO balancing authority area and has complied with the requirements of Order No. 697 as well as our previous directives in this proceeding.

i. Commission Requirements

54. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file before granting a seller market-based rate authorization.⁵⁰ The Commission also considers a seller's ability to erect barriers to entry.⁵¹

ii. Responsive Pleadings Addressing Vertical Market Power

55. Integrys maintains that the Commission must consider other factors in rendering its decision, including the vertically integrated nature of the electric industry in New Brunswick.⁵² Integrys states that NBP Generation has exclusive contracts for the sale of generation to NBP Distribution to serve load that allows for a portion of NBP Generation's costs to be recovered from that load, a benefit that no other market participant in the portion of northern Maine administered by the Northern Maine ISA can

⁴⁹ NBP Generation's August 10, 2009 filing indicates similar results for both the Maritimes control area and the NBSO balancing authority area when the available economic capacity measure is used. As explained above, our analysis focuses on the NBSO balancing authority.

⁵⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

⁵¹ *Id.* P 440.

⁵² Integrys' September 9, 2009 Protest at 3.

obtain. Thus, Integrys asserts that NBP Distribution company customers subsidize NBP Generation's wholesale business activities, allowing NBP Generation to offer below market prices that do not reflect the cost of generating, to the detriment of competitors like Integrys.⁵³ Integrys also contends that NBP Generation possesses control over transmission reservations and that there is a lack of nondiscriminatory transmission access for competitors, which gives NBP Generation the ability to monopolize the wholesale market in northern Maine and also to create barriers to entry.⁵⁴

56. In support of its claims, Integrys explains that Attachment M to the NBSO OATT provides procedures for customers seeking to utilize what is referred to as the "MEPCO Reservation." According to Integrys, the MEPCO Reservation, consisting of 188 MW of transmission capacity, is the only capacity on the New Brunswick to Maine Electric Power Company transmission line not committed under firm contracts with affiliates of New Brunswick Power Corporation and its successors. Integrys maintains that the Attachment M procedures do not allow for open access because they require a potential purchaser to disclose to its competing supplier (NBP Generation) a viable business plan that benefits New Brunswick, and such purchasers must also disclose sufficient financial resources to use the reservation.⁵⁵

57. Integrys argues that sellers in northern Maine lack sufficient competitive alternatives in which to sell electricity. Specifically, Integrys argues that sellers' only options in northern Maine are to sell energy to the retail suppliers in northern Maine, sell to NBP Generation, or attempt to export the energy to the competitive wholesale market operated by ISO New England. But to sell competitively into the ISO New England market, it is necessary to have a firm contract path into the market. Integrys argues that transmission transfer capability is tied up by Hydro-Quebec and NBP Generation. Integrys states that Attachment M specifies that 188 MW must be posted as available for firm transmission, but that transmission capability is only provided when it is in NBP Generation's best interest.⁵⁶

58. Integrys argues that lack of transmission access gives NBP Generation the ability to monopolize the wholesale market in northern Maine. Integrys submits that, if competing generators do not have firm access to ISO New England, such entities may be forced to sell to NBP Generation. Additionally, Integrys argues that, if NBP Generation

⁵³ *Id.* at 3-4.

⁵⁴ Integrys' September 9, 2009 Protest at 6, Morris Affidavit at 16.

⁵⁵ Integrys' September 9, 2009 Protest at 2 n.3, Morris Affidavit at 15-16.

⁵⁶ Integrys' September 9, 2009 Protest, Morris Affidavit at 15-16.

can offer artificially low prices for retail service, merchant wholesale generators in northern Maine may then be forced to sell power to NBP Generation. Integrys adds that a lack of transmission access can also create barriers to entry where no rational rival generation company installs new generation facilities absent access to a competitive wholesale market or a long-term contract with the dominant retail supplier.⁵⁷

59. NBP Generation responds by asserting that competing generators in northern Maine can sell energy to Hydro-Quebec, Nova Scotia Power, ISO New England, and other wholesale entities in northern Maine, New Brunswick, and Prince Edward Island unencumbered by transmission barriers.⁵⁸ Further, NBP Generation states that, although Integrys had the opportunity to purchase firm transmission to New England by participating in an open season for transmission conducted by the NBSO in 2007, it chose not to. NBP Generation explains that it was the New Brunswick Regulatory Board that directed the NBSO to include Attachment M in the NBSO OATT. NBP Generation states that the NBSO intends to proceed with an application to the New Brunswick Regulatory Board for revisions to the NBSO OATT in 2010. It states that, according to the NBSO, such revisions will include changes required to establish "compatibility" with the Commission's Order No. 890⁵⁹ *pro forma* tariff.⁶⁰ Additionally, NBP Generation states that it regularly relinquishes transfer capabilities to rival generation companies, both on a short-term and long-term basis.⁶¹

60. Integrys counters by claiming that NBP's Generation's November 9, 2009 Filing shows that NBP Generation possesses market power in the NBSO balancing authority area and controls vital transmission access between ISO New England and northern Maine that gives it great discretion and control over all transactions.⁶² Integrys further states that NBP Generation's control over the MEPCO transmission line is such that,

⁵⁷ *Id.* at 16.

⁵⁸ NBP Generation's September 24, 2009 Answer at 11.

⁵⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶⁰ NBP Generation's November 9, 2009 Filing at 3.

⁶¹ NBP Generation's September 24, 2009 Answer at 11.

⁶² Integrys' November 30, 2009 Protest at 7.

rather than follow the Attachment M procedures, in order to transmit power an entity can pay NBP Generation for service such as a "scheduling service" at an undisclosed rate. Integrys states that, in effect, NBP Generation is the gatekeeper on the New Brunswick to MEPCO transmission path. In both its November 30, 2009 Protest and April 21, 2010 Protest, Integrys reiterates its vertical market power concerns with Attachment M.

61. Integrys adds that, in addition to offering power prices subsidized by its Canadian retail customers in the NBSO balancing authority area, NBP Generation uses its control over transmission to limit the ability of competing generators located in northern Maine from reaching ISO New England markets, which threatens to strand generation in northern Maine.⁶³

iii. Commission Determination Regarding Vertical Market Power

62. Section 35.37(d) of the Commission's regulations provides that, in order to demonstrate a lack of vertical market power, a seller whose foreign affiliate(s) own, operate, or control transmission facilities outside of the United States that can be used by competitors of the seller to reach United States markets must demonstrate that such affiliate either has adopted and is implementing an OATT, or otherwise offers comparable, non-discriminatory access to such transmission facilities.⁶⁴ The Commission has also stated that it will determine, on a case-by-case basis, what arrangements or tariffs, other than the Order No. 888⁶⁵ *pro forma* tariff, would satisfy its concerns and that the Commission would judge any proposal against the Order No. 888 tariff in determining whether a proposal meets the basic comparability standards of Order No. 888. Further, it has been Commission policy to deny market-based rate authority

⁶³ Integrys April 21, 2010 Protest at 5.

⁶⁴ 18 C.F.R. § 35.37(d) (2010).

⁶⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

when an applicant fails to demonstrate that it satisfies the Commission's transmission market power concerns.⁶⁶

63. As described above, Integrys claims that NBP Generation's transmission affiliate NB Power Transmission Corporation does not comply with the Commission's open access transmission service requirements. Integrys maintains that the procedures in Attachment M of the NBSO OATT are discriminatory in that they require a potential purchaser to disclose to its supply competitor a viable business plan that benefits New Brunswick and that such purchaser must also disclose sufficient financial resources to use the reservation. Further, Integrys characterizes the New Brunswick electric industry as "vertically integrated" and states that NBP Distribution company customers subsidize NBP Generation's wholesale business activities.

64. As noted above, NBP Generation's affiliate NBP Transmission has handed over operational control of its transmission facilities to the NBSO. Thus, the Commission's analysis of compliance with open access requirements focuses on the NBSO OATT. NBP Generation's November 9, 2009 filing included vertical market power information related to the NBSO OATT. Specifically, NBP Generation provided further information on the New Brunswick Regulatory Board's direction that the NBSO include Attachment M in its OATT, including that Board's formal order of April 14, 2004. NBP Generation also provided the Commission with an update regarding NBP Generation's statement that, in light of Order No. 890, and subject to approval by the New Brunswick Regulatory Board, the NBSO will undertake any needed revisions to its filed OATT to assure continuing compliance with the Commission's reciprocity requirements. However, NBP Generation did not indicate whether these revisions will include changes to

⁶⁶ *Ontario Hydro Interconnected Markets, Inc.*, 78 FERC ¶ 61,369, at 62,529 (1997) ("Ontario Hydro not only fails to offer any transmission service into Ontario, but also offers only recallable "through" transmission and recallable export transmission for one year or less to any entity that seeks to reach United States markets (or Canadian markets outside of the Province of Ontario). We find that these limited services are inadequate to mitigate transmission market power."); *British Columbia Power Exchange Corp.*, 78 FERC ¶ 61,024, at 61,100 (1997) (While the Commission stated [in a previous order] that it would be amenable to a variety of approaches for foreign utilities to mitigate transmission market power, Powerex has not provided any explanation as to why BC Hydro did not adopt the Final Rule *pro forma* tariff or a tariff that is consistent with or superior to the Final Rule tariff. Nor has it otherwise persuaded us that its transmission and power sales arrangements mitigate market power.").

Attachment M. NBP Generation states that the NBSO estimates a decision from the New Brunswick Regulatory Board and implementation of those changes by late 2010.⁶⁷

65. NBP Generation explains that, while the New Brunswick Regulatory Board had previously found that an open season for the 188 MW of transmission rights over the MEPCO line would be appropriate, after considering the evidence presented in a subsequent proceeding, that Board instead directed that Attachment M be added to the OATT. The New Brunswick Regulatory Board found that it was in the public interest for other parties to have access to the MEPCO line and that it was "in the public interest to require that [New Brunswick Power Corporation] negotiate in good faith with qualified parties... for access to the MEPCO reservations." The New Brunswick Regulatory Board defined a qualified party as one that provides New Brunswick Power Corporation (or its successor)⁶⁸ with a viable business plan that would provide benefits to the province of New Brunswick and provides disclosure of sufficient financial resources to implement the proposed utilization of the MEPCO reservations.

66. As an initial matter, we note that there is no record evidence to demonstrate that NBP Generation or its affiliates have used Attachment M to discriminate against competitors or to reject a specific request from Integrys for transmission service.⁶⁹ At the same time, we recognize that the NBSO is revising its OATT in light of Order No. 890 and that those revisions will be subject to approval by the New Brunswick Regulatory Board.

67. Accordingly and in order to monitor compliance with our open access requirements, we will require NBP Generation to submit a compliance filing in Docket No. ER08-1439 once the New Brunswick Regulatory Board has acted on the revised NBSO OATT filing, within 30 days of the date of such action. The compliance filing must describe how the revised NBSO OATT offers comparable, non-discriminatory transmission access, including with respect to the provisions in Attachment M and any revisions to the provisions in Attachment M. At that time, the Commission will further examine whether comparable, non-discriminatory access is offered on the

⁶⁷ We note that the NBSO submitted its application for approval of proposed OATT changes to the New Brunswick Regulatory Board on October 18, 2010.

⁶⁸ As described above, New Brunswick Power Corporation has been reorganized into a holding company with four subsidiary operating companies, which include NBP Generation and its transmission affiliate.

⁶⁹ The Commission also notes that Integrys has provided no evidence that the NBSO has operated the transmission system to restrict access to Integrys, or in an otherwise unduly discriminatory or preferential manner.

New Brunswick to MEPCO transmission line. However, if the New Brunswick Regulatory Board has not acted on the revised NBSO OATT filing within six months of the date of this order, we direct NBP Generation to submit the proposed revised OATT to the Commission along with an explanation of how the revised NBSO OATT offers comparable, non-discriminatory transmission access, including with respect to the provisions in Attachment M. Further, starting from the date of this order, we will require NBP Generation to submit a report to the Commission every 90 days regarding the status of the New Brunswick Regulatory Board's review of the OATT.⁷⁰

68. We find Integrys' allegations regarding the vertically integrated nature of the electric industry in New Brunswick market to be misplaced in the context of this proceeding. Integrys asserts that NBP Generation's affiliate, NBP Distribution, subsidizes NBP Generation's wholesale business activities. Integrys does not explain how NBP Distribution subsidizes NBP Generation's wholesale business activities. However, we find the thrust of Integrys' argument here to be a complaint regarding the allocation of benefits and burdens among retail ratepayers. As such, it is not relevant to our examination of NBP Generation's market-based rate authority for wholesale sales in this proceeding.

69. Further, we find that Integrys has failed to submit evidence that supports its allegations that there is a lack of transmission access which gives NBP Generation the ability to monopolize the wholesale market in northern Maine. On the contrary, as NBP Generation notes, competing generators can sell to Hydro-Quebec, Nova Scotia Power, ISO New England, and other wholesale entities in northern Maine, New Brunswick, and Prince Edward Island.

70. Similarly, Integrys provided no evidence to show that NBP Generation has used other (i.e., non-transmission) inputs to generation to reduce transmission access in the relevant market, or otherwise erect barriers to entry. When considering a seller's ability to erect other barriers to entry as part of the vertical market power analysis, the Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who many access transportation of coal supplies (collectively, inputs to electric power production).⁷¹ The Commission also requires sellers to make an affirmative statement

⁷⁰ We note that this report is for informational purposes only and will not be noticed, nor require Commission action.

⁷¹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.⁷² Despite Integrys' general allegations, we find that it has not provided evidence to support a finding that NBP Generation has erected barriers to entry into the relevant market.

71. In light of our determinations herein, the Commission concludes that NBP Generation satisfies the Commission's requirements for market-based rate authority regarding vertical market power, subject to the compliance filing and reports directed herein.

2. Request for Rehearing and Clarification of the June 10 Order

a. NBP Generation's Rehearing Request

72. On rehearing, NBP Generation argues that the Commission should find that any wholesale sales into the portion of northern Maine administered by the Northern Maine ISA are not in interstate commerce and should be treated as non-jurisdictional sales. NBP Generation asserts that the holding in the June 10 Order undermines the Commission's previous statement that, for purposes of a market-based rate analysis involving a seller affiliated with a foreign utility, "[t]he Commission does not consider transmission and generation facilities that are located exclusively outside of the United States and that are not directly interconnected to the United States."⁷³ NBP Generation argues that, if the June 10 Order is viewed broadly, then any generator making a sale anywhere in Canada could be considered in United States interstate commerce by virtue of Canada and the United States being interconnected via numerous transmission lines. NBP Generation requests that the Commission clarify which generation in Canada interconnected to the United States is relevant to the Commission's market power analysis for determining whether to grant market-based rate authorization.

73. Additionally, NBP Generation argues that Integrys' position that wholesale sales in the portion of northern Maine administered by the Northern Maine ISA are subject to the Commission's jurisdiction is undermined by the appearance that Integrys does not report such sales in the Commission's required Electric Quarterly Reports along with all of its other jurisdictional sales.

74. Lastly, NBP Generation argues that a finding requiring additional analyses is in error to the extent such a finding is based on a belief that NBP Generation failed to

⁷² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

⁷³ Rehearing Request at 9 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 1002).

disclose affiliation with generation located in the NBSO balancing authority area in its application for market-based rate authorization. NBP Generation states that Exhibit B of its August 22, 2008 market-based rate application included the fact that generation was located in the NBSO balancing authority area. NBP Generation submits that, if the Commission disagreed with NBP Generation's statements as to the relevant markets for analysis in the application, the Commission could have requested additional analyses at the time it issued the order on the application. In addition, NBP Generation states that the Commission was aware of the regional transmission and generation topography when it ruled on its market-based rate application and to imply otherwise in the June 10 Order is prejudicial to NBP Generation, which is now subject to a refund effective date for sales it believed to be permissible based on the Commission's prior order.

b. Commission Determination

75. We will deny NBP Generation's request for rehearing and clarification. As we explained in the June 10 Order, NBP Generation is required to provide a horizontal market power analysis of the NBSO balancing authority area because it and its affiliate own generation in the NBSO balancing authority area. The NBSO balancing authority area is a unique balancing authority area that includes portions of both Canada and the United States, but nonetheless is a relevant geographic market for NBP Generation to study.

76. We continue to disagree with NBP Generation's contention that wholesale sales into the portion of northern Maine administered by the Northern Maine ISA are not in interstate commerce. Although NBP Generation's generation is located exclusively outside of the United States, it is directly interconnected to both ISO New England and to northern Maine. Northern Maine is in interstate commerce by virtue of its connection with the rest of the United States through the transmission facilities of NBP Generation's affiliate, NB Power Transmission.⁷⁴ As we have explained, although the electric system in northern Maine is not directly interconnected with any other domestic United States electric system, northern Maine's access to the electric system that serves the remainder of New England is through the transmission facilities of New Brunswick Power Corporation.⁷⁵ Accordingly, wholesale sales into northern Maine are jurisdictional.

77. Additionally, we continue to find NBP Generation's reliance on *Sharyland Utilities, L.P.*⁷⁶ to support its claim that the Commission lacks jurisdiction over sales into

⁷⁴ June 10 Order, 127 FERC ¶ 61,232 at P 27.

⁷⁵ *Northern Maine Independent System Administrator, Inc.*, 89 FERC ¶ 61,179, at 61,554-55 (1999).

⁷⁶ 121 FERC ¶ 61,006 (2007) (*Sharyland*).

northern Maine to be misplaced. In *Sharyland*, the Commission found that Sharyland, a utility in the Electric Reliability Council of Texas (ERCOT), ERCOT's market participants, and ERCOT would not become subject to Commission jurisdiction as "public utilities" by virtue of a new transmission interconnection between ERCOT and Mexico's Commission Federal de Electricidad (CFE). In the June 10 Order, the Commission explained its reasoning for distinguishing *Sharyland* from the instant proceeding; unlike in *Sharyland*, in the instant case, power is regularly transmitted between northern Maine and ISO New England through the transmission facilities of New Brunswick Power Corporation. In *Sharyland*, power would not regularly flow from Texas into another state (or vice versa) over the Sharyland facilities and any "commingling of electric energy generated in the United States with electric energy on the CFE transmission grid . . . will occur on an unplanned and infrequent basis."⁷⁷ In contrast, here the lines linking northern Maine with New Brunswick are regularly used to transmit power between northern Maine and ISO New England by way of New Brunswick.⁷⁸ Frequent and intentional flows of wholesale power from one state to another are Commission-jurisdictional, even if they necessarily cross international borders on the way, as is the case with northern Maine and the rest of the United States. The situation in *Sharyland* was an exception *only* because any comingling that occurred there would be unplanned and infrequent.

78. With respect to NBP Generation's argument that Integrys does not appear to be reporting its sales in the portion of northern Maine administered by the Northern Maine ISA in its Electric Quarterly Reports, we note that Integrys' Electric Quarterly Reports were not a determinative factor in requiring NBP Generation to submit a horizontal

⁷⁷ *Id.* P 23 (emphasis added). The Commission has recognized that power does regularly flow between ERCOT and other states over other interconnections (i.e., the existing, so-called North and East ties). See, e.g., *Central Power and Light Co.*, 40 FERC ¶ 61,077, at 61,223, Ordering Paragraphs (I) and (J) (1987) (CP&L). However, because those other interconnections were established pursuant to sections 210 and 211 of the FPA, 16 U.S.C. §§ 824i, 824j (2006), the Commission has explained that those other interconnections do not cause electric utilities in ERCOT or other entities in ERCOT that are not otherwise public utilities to become public utilities and thus become subject to Commission oversight as public utilities. See *Sharyland*, 121 FERC ¶ 61,006 at P 7, 22; see also CP&L, 40 FERC at 61,223, Ordering Paragraphs (I) and (J).

⁷⁸ June 10 Order, 127 FERC ¶ 61,232 at P 26-27.

market power study for the NBSO balancing authority area if it wished to retain its market-based rate authority.⁷⁹

79. We also disagree with NBP Generation's argument that the June 10 Order can be interpreted to mean that any generator making a sale anywhere in Canada could be considered in United States interstate commerce by virtue of Canada and the United States being interconnected via numerous transmission lines. The Commission found that NBP Generation must comply with our market-based requirements if it plans to sell power in the United States. These requirements, include, among other things, that it demonstrate that it does not possess market power in all relevant geographic markets.⁸⁰

80. Moreover, NBP Generation's request that the Commission clarify which generation in Canada interconnected to the United States is relevant to the Commission's market power indicative screens is outside the scope of this proceeding, as this proceeding is limited to NBP Generation's market power study of the NBSO balancing authority area. As we explained in the June 10 Order, customers in northern Maine have access to generation from the ISO New England market via the New Brunswick Power Corporation's transmission lines linking northern Maine and ISO New England by way of New Brunswick.⁸¹

81. Finally, whether NBP Generation should have been clearer in its market-based rate application in explaining that its generation is located in the NBSO balancing authority area is irrelevant for purposes of this proceeding. In Order No. 697, the Commission stated that it will continue to reserve the right to require an updated market power analysis from any market-based rate seller at any time.⁸² Accordingly, the Commission ordered NBP Generation to submit an updated market power analysis in this proceeding. We also disagree with NBP Generation's contention that the Commission's determinations in the June 10 Order result in prejudice to NBP Generation. NBP Generation is not subject to a refund effective date prior to the date that the Complaint was filed, and NBP Generation was on notice that the Commission would be further examining its market-based rate authorization from that date. The Complaint was filed pursuant to section 206 of the FPA, which allowed the Commission to establish a refund

⁷⁹ While we will deny NBP Generation's arguments in this regard, we note that it is free to file a complaint pursuant to section 206 of the FPA, 16 U.S.C. § 824e (2006).

⁸⁰ June 10 Order, 127 FERC ¶ 61,232 at P 24.

⁸¹ *Id.* P 27-28.

⁸² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

effective date. As such, NBP Generation had prior notice that refunds were possible.⁸³ Our actions in this proceeding do not call into question sales between the date that the Commission granted NBP Generation market-based rate authorization and the date that the Complaint was filed.

3. Seller Category Status

82. In Order No. 697, the Commission created two categories of sellers.⁸⁴ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.⁸⁵ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file regularly scheduled updated market power analyses.⁸⁶

83. Based on NBP Generation's representations that it owns more than 500 MW of generation capacity and transmission facilities in the NBSO balancing authority area, we find that NBP Generation meets the criteria for a Category 2 seller for the Northeast region and is so designated. Thus, NBP Generation is directed to submit a compliance filing, within 30 days from the date of this order, revising its market-based rate tariff to reflect its Category 2 seller status in the Northeast region.⁸⁷

⁸³ 16 U.S.C. § 824e(b).

⁸⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁸⁵ 18 C.F.R. § 35.36(a)(2) (2010).

⁸⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁸⁷ We note that NBP Generation was designated as a Category 1 seller in the October 6, 2008 Order. However, recognizing that NBP Generation owns more than 500 MW of generation in the NBSO balancing authority area located in the Northeast region, NBP Generation is designated as a Category 2 seller for this region.

84. NBP Generation must file an updated market power analysis for the Northeast region according to the regional reporting schedule adopted in Order No. 697.⁸⁸ The Commission also reserves the right to require such an analysis at any intervening time.

4. Termination of Complaint Proceeding

85. In light of our finding herein that NBP Generation satisfies the Commission's standards for market-based rate authority in the NBSO balancing authority area, Integrys' Complaint in this proceeding is hereby dismissed and the proceeding is terminated.

The Commission orders:

(A) NBP Generation's compliance filings are hereby accepted for filing, as discussed in the body of this order.

(B) NBP Generation's request for rehearing and clarification is hereby denied, as discussed in the body of this order.

(C) NBP Generation is hereby directed to submit a compliance filing, within 30 days of the date of this order, revising its market-based rate tariff to reflect its Category 2 seller status in the Northeast region, as discussed in the body of this order.

(D) NBP Generation is hereby directed to submit a report to the Commission every 90 days regarding the status of the New Brunswick Regulatory Board's review of the OATT, as discussed in the body of this order. NBP Generation is directed to file the first such report within 90 days of the date of this order.

(E) NBP Generation is hereby directed to submit a compliance filing, within 30 days of the date of action by the New Brunswick Regulatory Board on revisions to the NBSO OATT, as discussed in the body of this order.

(F) NBP Generation is hereby directed to submit a compliance filing containing the proposed revised NBSO OATT no later than six months after the date of this order, as discussed in the body of this order.

(G) NBP Generation is hereby directed to file an updated market power analysis for the Northeast region according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

⁸⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882.

Docket No. EL09-32-001, *et al.*

- 31 -

(H) Integrys' Complaint in this proceeding is hereby dismissed and the proceeding is terminated, as discussed in the body of this order.

By the Commission.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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Document Content(s)

EL09-32-001.DOC.....1-31

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RÉGIE DE L'ÉNERGIE

DOSSIER : R-3669-2008 / Phase 2

**RÉPONSES D'ENERGIE BROOKFIELD MARKETING (« EBM »)
AUX ENGAGEMENTS NUMÉROS 1 À 9
SOUSCRITS LORS DE L'AUDIENCE DES 20 ET 21 AVRIL 2011**

Le 5 mai 2011

RÉFÉRENCE : Notes sténographiques, 20 avril 2011, volume 21, page 115

ENGAGEMENT #1 : Confirmer que le reste de l'électricité produite par Énergie La Lièvre est vendue à Énergie Renouvelable Brookfield jusqu'en 2019 selon la représentation faite dans la notice annuelle.

RÉPONSE EBM-R.1 : Sous réserve de l'objection formulée à l'égard de cette question, nous le confirmons.

RÉFÉRENCE : Notes sténographiques, 20 avril 2011, volume 21, page 119

ENGAGEMENT #2 : Confirmer l'entité qui fait la programmation des quantités d'électricité injectées sur le réseau de TransÉnergie.

RÉPONSE EBM-R.2 : Tel qu'il appert de la Convention de service produite et du document « Schedule Details » (pièce B-211 produite en liasse), l'entité en question est Énergie Brookfield Marketing sec/Énergie Brookfield Marketing LP (ci-après « EBM »). La réponse a également été fournie par le panel, notes sténographiques, 20 avril 2011, Volume 21, pp. 152-153. Nous vous référons également à la réponse à l'engagement 3 sous réserve de l'objection formulée.

RÉFÉRENCE : Notes sténographiques, 20 avril 2011, volume 21, page 125

ENGAGEMENT #3 : Indiquer où se trouve EBM SEC dans la notice annuelle du 31 mars 2011; indiquer si EBM existe à ce jour; confirmer qui est le client de TransÉnergie. Compléter le diagramme apparaissant à la notice annuelle du 31 mars 2011.

RÉPONSE EBM-R.3 : Sous réserve de l'objection formulée, nous fournissons la réponse suivante.

À la page 1, dernier paragraphe, de la notice annuelle d'Énergie renouvelable Brookfield Inc. (pièce B-209), on peut lire :

« Tous les renvois à la société ou à Énergie renouvelable Brookfield visent Énergie renouvelable Brookfield, y compris ses sociétés remplacées et ses filiales consolidées, sauf si le contexte l'exige autrement. Tous les renseignements sont donnés en date du 31 décembre 2010, à moins d'indication contraire. »

Ainsi, la notice annuelle prévoit que la référence à Énergie renouvelable Brookfield Inc. inclut ses filiales. Or, Énergie renouvelable Brookfield Inc. détient 100% de Énergie Brookfield Marketing Inc. (« EBMI ») et 100% de Énergie Brookfield Marketing sec/Énergie Brookfield Marketing LP (« EBM »). EBMI existe toujours comme entité, elle est l'associé-gérant de EBM. EBMI a cédé toutes ses activités d'achats et de vente d'électricité à EBM suite à une

récente réorganisation. Le client actuel du service de transport est EBM et le Transporteur est au courant de la situation pour avoir consenti à certains transferts de convention.

À la page 2 de la notice annuelle d'Énergie renouvelable Brookfield Inc., dans l'organigramme et sous « Commerces et autres activités », on voit la référence à EBMI (version anglaise « Brookfield Energy Marketing Inc. ») ainsi qu'à EBM (version anglaise « Brookfield Energy Marketing LP »). Ainsi, contrairement à ce qui a pu être représenté, il n'y a pas lieu de compléter l'organigramme de la notice annuelle.

RÉFÉRENCE : Notes sténographiques, 20 avril 2011, volume 21, page 204

ENGAGEMENT #4 : Communiquer les communications définissant le mandat de monsieur Marshall.

RÉPONSE EBM-R.4 : A service agreement was entered into between Brookfield Energy Marketing Inc. and WKM Energy Consultants Inc. This agreement is not offered since it does not answer the undertaking. However, Appendix A of this service agreement describes the mandate. In answer to this undertaking, only extracts of Appendix A pertaining to the mandate is submitted.

RÉFÉRENCE : Notes sténographiques, 20 avril 2011, volume 21, page 223

ENGAGEMENT #5 : Indiquer les parties de l'ordonnance 739 dont monsieur Cormier a pris connaissance aux fins de son témoignage.

RÉPONSE EBM-R.5 : Monsieur Cormier a lu l'ordonnance 739 de la FERC jusqu'au paragraphe 43 inclusivement.

RÉFÉRENCE : Notes sténographiques, 21 avril 2011, volume 22, page 27

ENGAGEMENT #6 : Vérifier s'il y a eu une demande de service auprès de Northeast Utilities pour du transport ferme ou conditionnel ferme pour 200 mégawatts pour une durée de 40 ans en juillet 2010.

RÉPONSE EBM-R.6 : Nous joignons copie de la confirmation de cette demande du 7 juillet 2010 qui réfère à une manifestation d'intérêt du 9 juillet 2008.

RÉFÉRENCE : Notes sténographiques, 21 avril 2011, volume 22, page 40

ENGAGEMENT #7 : Vérifier aux listes fournies par le Transporteur et informer s'il y a ou pas de participant inscrit comme un représentant de Brookfield.

RÉPONSE EBM-R.7 : Nous référons à la réponse fournie aux pages 147 et 148 des notes sténographiques du 21 avril 2011. Monsieur Raymond Coxé de la firme Mosaic Energy Insights était présent à titre de consultant de Brookfield. Il s'agit d'un consultant qui agit pour Brookfield depuis juillet 2008 et dont son mandat était notamment de participer et de faire rapport quant aux activités du ISO-NE, incluant les rencontres du Planning Advisory Committee et du Economic Studies Process Working Group.

RÉFÉRENCE : Notes sténographiques, 21 avril 2011, volume 22, page 74

ENGAGEMENT #8 : Vérifier si Brookfield a fait des demandes d'études exploratoires en vertu de l'article 12A.5 des Tarifs et conditions avant 2008.

RÉPONSE EBM-R.8 : Selon les vérifications effectuées à ce jour, la réponse est négative.

RÉFÉRENCE : Notes sténographiques, 21 avril 2011, volume 22, page 75

ENGAGEMENT #9 : Vérifier si Brookfield a déjà participé au processus d'audience du BAPE relativement au développement de projets soumis par TransÉnergie.

RÉPONSE EBM-R.9 : Selon les vérifications effectuées à ce jour, Brookfield aurait été convoqué dans le cadre du dossier de la ligne Grand Brûlé/Vignan.

ENGAGEMENT EBM-R.4



APPENDIX "A"

SERVICES AND REMUNERATION

Subject to the terms and conditions of the Agreement between Brookfield Energy Marketing Inc. (**Brookfield**) and WKM Energy Consultants Inc. ("**Consultant**") dated April 28, 2009 and any amendments thereto, the Parties agree to the following:

1. Description of Services to be rendered by Consultant

Consultant shall provide the following Services over the term of the Agreement:

- Provide general advice to Brookfield as requested concerning market and tariff issues of interest
- Participation as an expert witness in the hearing process before the Regie in Montreal regarding the Phase 2 hearing of Hydro Quebec's application for changes to the Open Access Transmission Tariff ("OATT"). Such participation to include:
 - Consultation with Brookfield personnel (including external counsel) regarding OATT and market issues and possible approaches for evidence preparation and cross examination
 - Preparation of evidence on energy imbalance, planning processes, interpretation of tariff wording, and FERC Orders 890, 890-A and 890-B.
 - Testimony in defense of the evidence submitted

Services are to be rendered by William K Marshall over the course of the hearing process initiated by the March 6, 2009 decision of the Regie and which is expected to conclude by summer 2009.

This description is not intended to be a complete list of all duties and may be subject to change upon agreement by both Parties from time to time.



2. Remuneration

ENGAGEMENT EBM-R.6

Notice of Non-Conforming Transmission Service Request

On July 7, 2010, Northeast Utilities Service Company received a transmission service request from a prospective customer that, due to the nature of the request, cannot be posted on the NU OASIS under the OATI protocols. This notice contains the relevant information with respect to that request.

Customer:	Brookfield Energy Marketing Inc.
Service:	Long-term firm point-to-point transmission service over the proposed HVDC interconnection facilities summarily described in the Declaratory Order issued by FERC in Docket No. EL09-20 Alternatively, if firm should not be available for all hours during the term of the request, long-term conditional firm point-to-point transmission service over the same described facilities
MWs:	200 MW
Term:	Forty (40) years from commercial operation of the described facilities
Path/POR/POD:	Path - Proposed HVDC interconnection facilities summarily described in the Declaratory Order issued by FERC in Docket No. EL09-20 POR - Border between Quebec and ISO-NE control areas POD - To be determined location in New Hampshire
Request received:	July 7, 2010 (also referencing Brookfield Energy Marketing Inc. July 9, 2008 letter expressing interest in firm long-term transmission rights over proposed project between Quebec and the State of New Hampshire as described at ISO-NE meeting)

1. The first part of the document is a letter from the President of the United States to the Congress.

2. The second part of the document is a report from the Secretary of the Treasury on the state of the Union.

3. The third part of the document is a report from the Secretary of the Navy on the state of the Navy.

119 FERC ¶ 61,295
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

(Docket No. RM04-7-000; Order No. 697)

Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary
Services By Public Utilities

(Issued June 21, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to revise Subpart H to Part 35 of Title 18 of the Code of Federal Regulations governing market-based rates for public utilities pursuant to the Federal Power Act (FPA). The Commission is codifying and, in certain respects, revising its current standards for market-based rates for sales of electric energy, capacity, and ancillary services. The Commission is retaining several of the core elements of its current standards for granting market-based rates and revising them in certain respects. The Commission also adopts a number of reforms to streamline the administration of the market-based rate program.

EFFECTIVE DATE: This rule will become effective [Insert Date 60 days after publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

Debra A. Dalton (Technical Information)
Office of Energy Markets and Reliability

Régie de l'énergie
DOSSIER: R-3669-2008 Phase 2
DÉPOSÉE EN AUDIENCE
Date: 11/05/2011
Pièces n°: C-6-112 EBN

affiliates making sales within the mitigated balancing authority area. Our decision here takes into account Duke's and PPL's arguments against rescission of blanket authorization for all affiliates in all markets. We conclude that it is not necessary to rescind such blanket authorizations in the case of affiliates that make sales outside of the mitigated balancing authority area because the seller retains its market-based rate authority in unmitigated markets. We clarify that the effective date for rescinding blanket authorization under Part 34 will be commensurate with the date on which a mitigated seller begins to sell power at cost-based rates. Further, sellers losing their market-based rate authority must file with the Commission to obtain specific authorization for securities to be issued, or liabilities to be assumed, prior to the date the seller first sells at cost-based rates.

2. Sellers Affiliated with a Foreign Utility

Commission Proposal

1001. Under existing policy, a seller affiliated with a foreign utility selling in the United States (and each of its affiliates) must not have, or must have mitigated, market power in generation and transmission and not control other barriers to entry. In addition, the Commission considers whether there is evidence of affiliate abuse or reciprocal dealing. However, for sellers affiliated with a foreign utility, the Commission has allowed a modified approach to the current four prongs.

1002. With regard to generation market power, should any of the seller's first-tier markets include a United States market, the seller performs the market power screens in that control area(s). With regard to transmission market power, the Commission

requires the seller affiliated with a foreign utility seeking market-based rate authority to demonstrate that its transmission-owning affiliate offers non-discriminatory access to its transmission system that can be used by its competitors to reach United States markets. The Commission does not consider transmission and generation facilities that are located exclusively outside of the United States and that are not directly interconnected to the United States. However, the Commission would consider transmission facilities that are exclusively outside the United States but nevertheless interconnected to an affiliate's transmission system that is directly interconnected to the United States. A seller affiliated with a foreign utility must inform the Commission of any potential barriers to entry that can be exercised by either it or its affiliates in the same manner as a seller located within the United States. Regarding affiliate abuse, the requirement that a power marketer with market-based rate authority file for approval under section 205 of the FPA before selling power to a utility affiliate does not apply to situations involving sales of power to a foreign utility outside of the Commission's jurisdiction.

1003. The Commission proposed in the NOPR to retain its current policy when reviewing the application for market-based rate authorization by a seller affiliated with a foreign utility, and sought comment regarding whether the current policy is adequate to grant market-based rate authorization to such sellers. No comments were submitted on the broad question of whether our current policy, in general, is

adequate. However, Powerex and NL Hydro¹¹⁴⁶ raise specific issues that are addressed below. As discussed below, we conclude that our current approach needs no modification. Accordingly, we will adopt the NOPR proposal to retain our current policy when reviewing an application for market-based rate authority by a seller affiliated with a foreign utility.

Comments

1004. Powerex notes that comparability for non-jurisdictional United States-based transmission providers ("unregulated transmitting utilities" under the FPA) is now defined by statute to mean service "at rates that are comparable to those that the unregulated transmitting utility charges itself" and "on terms and conditions that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential."¹¹⁴⁷ Powerex notes that, in the OATT Reform NOPR, the Commission proposed to apply the comparability requirement of FPA section 211A on a case-by-case basis, *i.e.*, by complaint.¹¹⁴⁸ Powerex states that, under principles of national treatment as set out in the North American Free Trade Agreement (NAFTA), the Commission should impose no more stringent a burden on similarly non-

¹¹⁴⁶ NL Hydro is a Crown Corporation owned by the Government of Newfoundland and Labrador.

¹¹⁴⁷ 16 U.S.C. 824j-1(b).

¹¹⁴⁸ OATT NOPR at P 111.

jurisdictional Canadian and Mexican transmission-owning utilities. For that reason, Powerex urges the Commission to clarify that it will presume that Canadian and Mexican transmitting utilities are providing comparable and not unduly discriminatory or preferential transmission service unless this presumption is otherwise rebutted by third party or Commission-instituted complaint.¹¹⁴⁹

1005. NL Hydro urges the Commission to reject Powerex's suggestion that the Commission no longer should require market-based rate sellers to affirmatively demonstrate that non-discriminatory access is offered on transmission facilities that they or their affiliates own, control, or operate outside of the United States. NL Hydro argues that the comparability standard of FPA section 211A does not govern the Commission's market-based rate analysis of transmission market power.¹¹⁵⁰ It states that the Commission has not suggested, in either this proceeding or the OATT rulemaking, that the comparability standard in FPA section 211A should create a presumption that any market-based rate seller (domestic or affiliated with a foreign utility) should be presumed to have passed the transmission market power test.¹¹⁵¹

1006. NL Hydro supports the Commission's proposal to retain its existing requirements with respect to the mitigation of transmission market power when

¹¹⁴⁹ Powerex at 32.

¹¹⁵⁰ NL Hydro reply comments at 3.

¹¹⁵¹ Id. at 5.

reviewing the market-based rate applications of sellers affiliated with a foreign utility. According to NL Hydro, these requirements establish a reasonable balance among important regulatory objectives by: (1) requiring non-discriminatory access to foreign transmission facilities for access to United States markets as a condition of market-based rate authority; (2) complying with the national treatment requirements of NAFTA; and (3) applying principles of comity to the jurisdiction of foreign regulatory authorities with direct regulatory jurisdiction over foreign transmission entities.¹¹⁵² Accordingly, NL Hydro believes that the Commission should codify in its regulations the requirement that a market-based rate seller, or its affiliate, that owns, controls, or operates transmission facilities outside of the United States must demonstrate that non-discriminatory access is offered on those facilities so that competitors of the seller may reach United States markets.

Commission Determination

1007. We will continue to require a seller seeking market-based rate authority that is a foreign utility or is affiliated with a foreign utility to affirmatively demonstrate that any owned or affiliated transmission is offered on a non-discriminatory basis that can be used by competitors of the seller or its affiliate to reach United States markets.

Accordingly, we reject Powerex's suggestion that the Commission should presume that foreign transmitting utilities are providing comparable and not unduly

¹¹⁵² NL Hydro at 13.

discriminatory or preferential transmission service unless this presumption is rebutted. The Commission did not propose to implement section 211A of the FPA in Order No. 890 and section 211A is not relevant to the Commission's analysis for purposes of granting or denying market-based rate authority.¹¹⁵³

1008. We will codify in § 35.37(d) of the Commission's regulations the requirement that a market-based rate seller affiliated with a foreign utility, or its affiliate, that owns, controls, or operates transmission facilities outside of the United States and is interconnected with the United States must demonstrate that comparable, non-discriminatory access is offered on those facilities so that competitors of the seller may reach United States markets.

3. Change in Status

Commission Proposal

1009. In early 2005, the Commission clarified and standardized market-based rate sellers' reporting requirements for any change in status that departed from the characteristics the Commission relied on in initially authorizing sales at market-based rates. In Order No. 652,¹¹⁵⁴ the Commission required, as a condition of obtaining and retaining market-base rate authority, that sellers file notices of such changes no later than 30 days after the change in status occurs. In the NOPR, the Commission sought comment on a number of issues that the Commission identified in Order No. 652 as

¹¹⁵³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 192.

¹¹⁵⁴ Order No. 652 at P 47.

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N^o : R-3669-2008 – Phase 2

RÉGIE DE L'ÉNERGIE

Demande relative à la modification des tarifs et
des conditions des services de transport
d'Hydro-Québec à compter du 1er janvier 2009
(Phase 2).

AMENDED DIRECT TESTIMONY

OF

DR. ROBERT A. SINCLAIR

On behalf of

NEWFOUNDLAND AND LABRADOR HYDRO

Original version filed June 10, 2009
Amended version filed September 23, 2010

1 service class. As explained in the next subsection, there should be a way to
2 release capacity to the market when a distributor resource (or a Heritage Pool
3 resource) makes a firm third-party sale. That involves careful consideration and
4 is not clearly reflected in Attachment C-1.

5 Because of the lack of clarity and the complexity of the issues involved, I
6 recommend the Régie instruct HQT to hold technical sessions with stakeholders
7 to explain the OASIS system in the context of the revised HQT OATT. These
8 sessions would provide transmission customers and regulators an opportunity to
9 gain a better understanding of the proposed ATC calculations while also
10 facilitating customer and regulator input. Such stakeholder processes and
11 working groups are standard practices in neighboring transmission systems, like
12 the New York ISO and the Midwest ISO.

13 **III. COORDINATED, OPEN, AND TRANSPARENT PLANNING**

14 Q. WHAT IS THE PURPOSE OF THE SECTION OF YOUR TESTIMONY?

15 A. In this section, I address the reforms in Order 890 aimed at instituting
16 “coordinated, open and transparent” planning processes. I first discuss the nature
17 of the proposed reforms and then address whether the provisions relating to
18 transmission planning in the revised HQT OATT are consistent with or superior
19 to the proposed reforms.

20 Q. WHAT IS MEANT BY COORDINATED, OPEN, AND TRANSPARENT
21 PLANNING?

22 A. Coordinated, open, and transparent planning refers to the general objectives in
23 Order 890 to establish industry-wide processes and standards that facilitate
24 broader participation in the planning and expansion of the transmission grid.
25 Primarily this involves inviting participation by transmission customers and other
26 stakeholders to regular planning meetings and providing these entities with
27 greater information and access to planning data and models.

1 Q. WHAT IS THE RATIONALE FOR REFORMING THE TRANSMISSION
2 PLANNING PROCESS?

3 A. Reform of the planning process under Order 890 is based on the recognition that
4 despite general requirements to plan the transmission network to meet the needs
5 of all transmission customers, transmission providers had adverse incentives to
6 use the planning process to their own competitive advantage. Order 890 states the
7 rational for initially launching the reform:

8 In order to provide for more comparable open access transmission service,
9 limit the potential for undue discrimination and anticompetitive conduct,
10 and satisfy its statutory responsibilities under section 217 of the FPA
11 [concerning infrastructure], the [FERC] proposed to amend the pro forma
12 OATT to require coordinated, open, and transparent transmission planning
13 on both a local and regional level (Order at ¶426).

14 Indeed, this rationale remained intact as FERC reached its conclusions:

15 In order to limit the opportunities for undue discrimination ... and to
16 ensure that comparable transmission service is provided by all public
17 utility transmission providers, including RTOs and ISOs, [FERC]
18 concludes that it is necessary to amend the existing pro forma OATT to
19 require coordinated, open, and transparent transmission planning on both a
20 local and regional level (Order at ¶435).

21 Q. WHAT IS THE PLANNING PROCESS REQUIRED IN ORDER 890?

22 A. Order 890 requires each transmission provider to establish a planning process
23 (or have in place an existing process) that meets specific principles established
24 in the order. The Order requires documentation of the planning process as an
25 attachment to the transmission provider's OATT.

26 A planning process that meets the minimum requirements of the Order would
27 meet at least nine principles. The Order explains these principles in detail.
28 Although all of the planning principles are important, the first four of the nine
29 principles (coordination, openness, transparency, and information exchange)
30 define the essential nature of the proposed changes: to establish a process that
31 incorporates transmission customers and others and provides these entities
32 with information that gives them meaningful participation.

1 Q. DOES ORDER 890 SPECIFY HOW MEANINGFUL PARTICIPATION
2 CAN BE ATTAINED?

3 A. Yes. The Order provides extensive discussion of various ways meaningful
4 participation can be attained. For example, the process should allow
5 participants to replicate the planning studies:

6 [Planning] information should enable customers, other stakeholders,
7 or an independent third party to replicate the results of planning
8 studies and thereby reduce the incidence of after-the-fact disputes
9 regarding whether planning has been conducted in an unduly
10 discriminatory fashion.

11 The process should also allow customers to choose studies and request certain
12 "high priority" cases:

13 The Commission will ... allow customers to choose the studies that
14 are of the greatest value to them. Specifically, we are modifying the
15 principle to require that stakeholders be given the right to request a
16 defined number of high priority studies annually (e.g., five to ten
17 studies) to address congestion and/or the integration of new resources
18 or loads. The intent of this approach is to allow customers, not the
19 transmission provider, to identify those portions of the transmission
20 system where they have encountered transmission problems due to
21 congestion or whether they believe upgrades and other investments
22 may be necessary to reduce congestion and to integrate new
23 resources. The customers should be able to request that the
24 transmission provider study enhancements that could reduce such
25 congestion or integrate new resources on an aggregated or regional
26 basis without having to submit a specific request for service. This
27 approach ensures that the economic studies required under this
28 principle are focused on customer needs and concerns, not
29 administratively determined metrics that may bear no necessary
30 relation to those concerns. Once such studies are requested, the
31 transmission provider would conduct the studies, including
32 appropriate sensitivity analyses, in a manner that is open and
33 coordinated with the affected stakeholders (Order at ¶547)

34 Q. WHAT DOES A TRANSMISSION PROVIDER HAVE TO DO TO MEET THE
35 TRANSMISSION PLANNING REQUIREMENTS UNDER ORDER 890?

36 A. As indicated above, Order 890 (at ¶437) requires that each transmission provider
37 include an attachment to its OATT that documents the existence of a coordinated

1 and regional planning process that complies with principles established in the
2 Order. Transmission providers with existing planning processes must show such
3 processes are "consistent with or superior to" the requirements in the Order.

4 Q. DID HQT FILE AN ATTACHMENT TO ITS REVISED OATT TO SATISFY
5 THE TRANSMISSION PLANNING REQUIREMENTS OF ORDER 890?

6 A. No. In submitting its revised OATT in this case, HQT indicated that its current
7 transmission planning process adequately addresses the concern expressed in
8 Order 890 with regard to transmission planning and, accordingly, HQT concluded
9 that it was not necessary to include an OATT Attachment containing provisions
10 for transmission planning consistent with Order 890.

11 HQT makes two main arguments for why it judges it unnecessary to meet the
12 planning requirements under Order 890. HQT first claims that the coordinated
13 planning process required under Order 890 is primarily aimed at addressing
14 deficient infrastructure investment in the U.S., something that is not a problem in
15 Québec. Second, HQT claims that the existing regulatory structure under the
16 Régie is sufficient to prevent discrimination against transmission customers that
17 may arise through the planning and development of the transmission network.

18 Q. PLEASE EXPLAIN HQT'S CLAIM THAT DEFICIENT TRANSMISSION
19 INFRASTRUCTURE INVESTMENT IS THE PRIMARY MOTIVATION FOR
20 THE REFORM OF THE PLANNING PROCESS UNDER ORDER 890.

21 A. In conjunction with the filing of the revised HQT OATT, HQT asserts that the
22 primary aim of the coordinated planning process under Order 890 is to remedy the
23 deficiency of transmission infrastructure investment in the U.S. As stated by
24 HQT:

25 Aux États-Unis, la pertinence d'ajouter un processus de planification
26 ouvert et transparent, l'appendice K de l'OATT *pro forma*, vise
27 principalement à combler la déficience d'investissements en
28 infrastructure de transport (HQT Statement Accompanying Request).
29

1 *ENGLISH TRANSLATION: In the US, the relevance of adding an*
2 *open and transparent planning process, attachment K, is aimed at*
3 *solving the deficiency in transmission infrastructure investments.*

4 While it is true that part of the motivation for reform of the planning process
5 under Order 890 is to accelerate transmission investment, the Order also places
6 significant emphasis on competitive issues. In particular, the exclusion of
7 transmission customers and other stakeholders (including regulators) from
8 meaningful participation in planning processes is seen by the FERC as an
9 opportunity for transmission owners to discriminate against their rivals in
10 generation markets. This is clear at many places in Order 890. Consider, for
11 example, ¶84:

12 The Commission also affirms the finding in the NOPR that Order No.
13 888 does not contain sufficient protections to guard against undue
14 discrimination in transmission system planning. Without adequate
15 coordination and open participation, market participants have minimal
16 input or insight into whether a particular transmission plan treats all
17 loads and generators comparably. To ensure that truly comparable
18 transmission service is provided by all public utility transmission
19 providers, including RTOs and ISOs, we amend the pro forma OATT to
20 require coordinated, open, and transparent transmission planning on both
21 a sub-regional and regional level.

22 Consider also ¶422:

23 We cannot rely on the self-interest of transmission providers to expand
24 the grid in a non-discriminatory manner. Although many transmission
25 providers have an incentive to expand the grid to meet their state-
26 imposed obligations to serve, they can have a disincentive to remedy
27 transmission congestion when doing so reduces the value of their
28 generation or otherwise stimulates new entry or greater competition in
29 their area.

30
31 And consider ¶425:

32 Taken together, this lack of coordination, openness, and transparency
33 results in opportunities for undue discrimination in transmission
34 planning. Without adequate coordination and open participation, market
35 participants have no means to determine whether the plan developed by
36 the transmission provider in isolation is unduly discriminatory.

37 Given these express concerns in the Order about discriminatory conduct, HQT's
38 claim that the Order 890 planning requirement is primarily aimed at infrastructure

development is misleading. Indeed, eliminating and preventing discriminatory conduct is emphasized in the Order as much as if not more than the state of grid investment. Accordingly, stimulating investment in the U.S. transmission network is neither the sole nor even necessarily the overriding concern being addressed by Order 890.

There is also a reciprocity issue involved if HQT fails to develop coordinated planning while transmission providers in the U.S. do so. Even if it were true that the planning requirement was primarily a matter of stimulating transmission investment in the U.S., transmission investments have critical market impacts and provide general competitive benefit. As a result, if reform of transmission planning in the U.S. makes it easier for Québec suppliers to sell there because of increased transmission capacity, having in place a coordinated planning process allows HQT to reciprocate, even if, as HQT claims, no increase in Québec capacity is presently needed.

Q. WHAT DOES HQT CLAIM WITH RESPECT TO INFRASTRUCTURE INVESTMENT IN QUÉBEC?

A. In its statement accompanying its Request in this case, HQT states:

Au Québec, le cadre réglementaire assure un niveau d'investissements qui satisfait la demande et maintient un excellent niveau de fiabilité, tout en assurant un contrôle rigoureux de toute forme de discrimination induite envers les clients du Transporteur.

ENGLISH TRANSLATION: In Québec, the regulatory framework ensures that the level of investment meets the demand and maintains excellent reliability levels, while at the same time making sure that there is no undue discrimination towards HQT clients.

As described above, a key objective in Order 890 is to prevent undue discrimination. Prior to open access, many vertically-integrated systems achieved admirable levels of reliability. However, this was unrelated to whether competitors were able to gain access to transmission service on a non-discriminatory basis. Reliability provides no indication that a system is conforming to principles of non-discrimination so it is not a relevant

1 consideration as to the whether or not HQT meets the transmission planning
2 reform under Order 890.

3 Q. DOES HQT'S FILING ADDRESS DISCRIMINATION?

4 A. Yes. In the same quoted passage, HQT, also states that the regulatory regime in
5 Québec operates to prevent undue discrimination. HQT goes on to explain that
6 the Régie has the regulatory authority to examine and approve all transmission
7 projects and that for projects with cost greater than \$C25 million, a special
8 authorization is required. This process is similar to the processes used in the US
9 to approve system expansions and upgrades.

10 While I do not doubt that the Régie has the competency and resources to assess
11 the reliability and economic aspects of these projects, such an analysis necessarily
12 is conducted in isolation of other alternatives that are seldom presented in such
13 proceedings. Indeed, one of the stated justifications for reforming the planning
14 process is the disadvantage faced by transmission customers when excluded from
15 the transmission planning process and having to become involved only after the
16 fact in a regulatory proceeding. As explained in Order 890:

17 [The absence of coordinated planning] means that disputes over access and
18 discrimination occur primarily after-the-fact because there is insufficient
19 coordination and transparency between transmission providers and their
20 customers for purposes of planning³ (Order at 425).

³ Order 890 goes on to note:

In our discussion of enforcement issues at section V.E of this [Order], we note specific situations in which transmission providers have agreed to resolve staff allegations that they engaged in OATT violations involving transactions with affiliates. While these specific situations may not directly relate to discrimination in planning, they nevertheless document the continuing incentive of transmission providers to favor themselves and their affiliates in the provision of transmission service.

1 Q. PLEASE EXPLAIN WHY A COORDINATED PLANNING PROCESS, LIKE
2 THE ONE ENVISIONED IN ORDER 890, IS SUPERIOR TO RELIANCE ON
3 AN INVESTMENT AUTHORIZATION PROCESS UNDER REGULATORY
4 PROCEEDINGS.

5 A. First, the Régie process, because it is an investment authorization process, is a
6 process that, at best, looks back into studies and models at what has been done to
7 reach a specific outcome. It is not a process that allows other parties to be
8 involved in the search for alternative outcomes.

9 A coordinated planning process is superior to a regulatory proceeding because
10 stakeholders are involved at a much earlier stage and are provided critical
11 information. In a regulatory proceeding, the transmission owner conducts the
12 planning studies prior to proposing the projects to regulators. Once these are
13 unveiled at the regulatory proceeding, transmission customers and other
14 stakeholders are then provided the results, which typically are summary in nature.
15 Transmission customers gaining access to underlying modeling and data requires
16 information requests.

17 Q. ARE INFORMATION REQUESTS AN EFFICIENT WAY TO CONVEY
18 INFORMATION TO TRANSMISSION CUSTOMERS AND
19 STAKEHOLDERS?

20 A. No. The information request process is cumbersome, it introduces delays, and
21 often it is characterized by reluctance on the part of the receiving party to provide
22 the critical information. Moreover, the requesting parties are at a disadvantage
23 because they have not participated in the planning studies and were not exposed
24 to nuances of alternative upgrade and expansion options.

25 Q. WHY IS THE INFORMATION REQUEST PROCESS CUMBERSOME?

26 A. The information request process requires precise written requests that can
27 sometimes be misunderstood by the receiving party. Worse, a slightly imprecise
28 request can be used to justify a non-response.

1 For example, in a recent proceeding at the Régie, involving ATC calculations
2 (Cases 110-1565, et al.), NLH submitted a request to HQT asking for the
3 electronic version of the base power flow case that supported the ATC
4 calculations. The request was written as follows:

5 On Page 8 of the May 4th Draft SIS, a reference is made to the "baseline
6 study". Please provide the (solved) power flow case in electronic format
7 that comprises the "Baseline study". Please provide in PTI RAW data
8 format.

9 This request clearly asked for an electronic version of the power flow case in a
10 format (PTI RAW) that is widely known by transmission system modelers. Here
11 is the relevant portion of the response by HQT:

12 Le cas de base est décrit dans les données déjà fournies à NLH. Ce cas de
13 base est décrit dans les écoulements de puissance transmis à NLH le 17
14 janvier 2008 de façon confidentielle conformément à l'entente de
15 confidentialité signée par NLH en date du 11 janvier 2008.

16 *ENGLISH TRANSLATION: The base case has been already provided to*
17 *NLH. This base case is described within the Power flows sent to NLH*
18 *January 17, 2008 as a confidential document.*

19 The 'base case' that HQT refers to in the response is a paper copy of the summary
20 of base case results, not an electronic version of the underlying power flow case.
21 While it is possible that the response was deliberately avoided as a litigation
22 tactic, more likely it was simply misunderstood.

23 Q. DO YOU HAVE AN EXAMPLE FROM THIS PRESENT CASE?

24 A. Yes. Consider the following request by NLH (information request 16.1):

25 Does Part III of the pro forma 890 OATT (Network Transmission Integration
26 Service) establish the "minimum terms and conditions of non-discriminatory
27 service" applicable to Part IV of the HQT 890 OATT (Native-Load
28 Transmission service)?

29 HQT responded:

30 Dans sa décision D-2002-95, la Régie a ordonné au Transporteur d'ajouter la
31 Partie IV des *Tarifs et conditions*, laquelle régit le service de transport pour
32 l'alimentation de la charge locale.

1 *ENGLISH TRANSLATION: In Decision D-2002-95, the Régie ordered HQT*
2 *to add Part IV of the Tariff to address transmission service for serving native-*
3 *load customers.*

4 It seems HQT's response is true. However, it does not answer the request, which
5 is plainly asking whether the network integration transmission service in the *pro*
6 *forma* 890 OATT establishes the conditions for native-load transmission service
7 under the HQT OATT. A series of related requests were based on HQT's
8 response to 16.1. However, because HQT did not respond affirmatively or not
9 affirmatively, HQT availed itself of responding to any of the subsequent requests.
10 There was no useful information provided from HQT in this effort.

11 Unfortunately, individuals experienced in litigation are familiar with this
12 frustration. These are only simple and clear examples of the disadvantage that
13 transmission customers can experience when trying to use regulatory proceedings
14 as a way to protect their interests in the transmission planning process. Of course,
15 unreasonable responses to information requests can be appealed and litigated.
16 However, this tends to delay proceedings and while a just outcome may prevail,
17 using litigation as a means to exchange information is far less efficient than a
18 coordinated, open process that serves to avoid after-the-fact disputes.

19 Q. IS THERE ANOTHER REASON LITIGATION BEFORE RÉGIE IS INFERIOR
20 TO A COORDINATED PLANNING PROCESS?

21 A. Yes. The litigation process also separates the technical experts by requiring
22 communication through attorneys as opposed to direct discussion. A coordinated,
23 open process would bring together directly the transmission provider's experts
24 with the experts of the transmission customers and other stakeholders.

25 Q. HAVE TRANSMISSION CUSTOMERS BEEN ADVERSELY AFFECTED IN
26 QUÉBEC BY THE LACK OF A COORDINATED, OPEN, AND
27 TRANSPARENT PLANNING PROCESS?

28 A. Yes. In January 2006, NLH made a transmission service request for transmission
29 long-term service from the proposed Lower Churchill project into Ontario, New
30 England, New York, and New Brunswick. In the absence of transparency in

1 HQT's planning process, NLH, with no guidance or insight from the transmission
2 provider, had to request that a range of capacity bookings be studied. A more
3 open and transparent planning process would have enabled NLH to make its
4 transmission service request from a more informed perspective, rather than having
5 to request specific detailed information during the system impact study itself.
6 Furthermore, a more open planning process would allow the transmission
7 customer to assess the results of the system impact studies more fully. NLH has
8 been adversely affected by the absence of transparency and, as result, it elected to
9 seek redress at the Régie in filing several complaints.

10 Q. ARE YOU AWARE OF CIRCUMSTANCES THAT INDICATE AN ABSENCE
11 OF OPENNESS IN HQT'S PLANNING PROCESS?

12 A. Yes, when NLH sought to intervene in the Régie investment proceeding (R-3696-
13 2009), HQT initially objected. Among several objections, HQT stated:

14 Le Transporteur questionne l'éclairage additionnel que pourrait apporter NLH
15 dans le présent dossier et l'absence de pertinence par rapport aux enjeux qui y
16 sont traités (See HQT attorney letter dated May 26, 2009).

17 *ENGLISH TRANSLATION: HQT questions the added value of NLH in this*
18 *filing given the absence of relevance with respect to the issues.*

19 This filing concerns an HQT investment of \$260 million on its entire network to
20 solve major voltage issues affecting all HQT clients.

21 Such circumstances do not support HQT's assertion that the Régie processes for
22 guiding transmission planning will provide customers the opportunity to have
23 meaningful participation as envisioned in Order 890.

24 Q. WHAT DO YOU RECOMMEND REGARDING ORDER 890 REFORMS
25 RELATED TO COORDINATED PLANNING?

26 A. The Régie should require HQT to adhere to the requirements of Order 890 by
27 establishing a coordinated, open, and transparent planning process. As described
28 in more detail in the Order, this process should include, at least the following (see
29 Order ¶602):

- a) the process for consulting with customers and neighboring transmission providers;
- b) the notice procedures and anticipated frequency of meetings or planning related communications;
- c) a written description of the methodology, criteria, and processes used to develop transmission plans;
- d) the method of disclosure of transmission plans and related studies and the criteria, assumptions and data underlying those plans and studies;
- e) the obligations of and methods for customers to submit data to the transmission provider;
- f) the dispute resolution process;
- g) the transmission provider's study procedures for economic upgrades to address congestion or the integration of new resources; and
- h) the relevant cost allocation procedures or principles.

IV. TRANSMISSION PRICING (IMBALANCE SERVICE)

Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?

A. In this section, I address issues in Order 890 relating to transmission pricing, in particular, imbalance policies.

Q. WHAT ARE THE IMBALANCE POLICIES THAT YOU ADDRESS?

A. In a letter dated March 27, 2009, HQT and Independent Electricity System Operator (IESO) explained to the Régie that they had issued a "Joint Statement" to Ontario Power Generation (OPG) concerning the applicability of imbalance requirements. In particular, IESO and HQT agreed that OATT Imbalance policies (Schedules 4 and 5 of the HQT OATT) would not apply to generators in the IESO control area (which includes OPG).

Q. WHAT IS THE BASIS FOR THE IESO/HQT AGREEMENT?

A. It is not clear from the letter exactly why this agreement was needed and what the implications are for other transmission customers. It appears the transmission providers agree that IESO can address balancing concerns itself in the event an

1 Q. WHAT IS THE CONCERN THAT ARISES WHEN A TRANSMISSION
2 PROVIDER LEAVES ITSELF SIGNIFICANT DISCRETION IN THESE
3 MATTERS?

4 A. The concern involves the ability of the transmission provider to engage in undue
5 discrimination based on this discretion. HQT's credit worthiness provisions could
6 be used to provide its affiliate with favorable credit terms while allowing it to
7 restrict credit to other non-affiliated transmission customers. The absence of a
8 procedure for ensuring that transmission customers can obtain a written
9 explanation for changes in credit limits adds to the potential opportunity for
10 discrimination.

11 Q. WHAT ARE YOUR RECOMMENDATIONS?

12 A. First, I recommend that HQT should revise the elements discussed above that
13 provide the potential for undue discrimination. With respect to HQT reviewing
14 and adjusting customer credit limits HQT should be required to limit the exercise
15 of this right to circumstances of material adverse change affecting the risk of
16 nonpayment by the customer. HQT should establish clear criteria for how this
17 would be done. It should be linked to the original criteria used to establish such
18 limits. Finally, a procedure for providing customers, upon request, a written
19 explanation for any change in credit levels or collateral requirements should be
20 added to Attachment L.

21 VII. RESPONSE TO HQT'S AMENDED EVIDENCE

22 Q. WHAT IS THE PURPOSE OF YOUR AMENDED TESTIMONY?

23 A. NLH asked me to address certain issues that HQT raised in its amended evidence
24 filed in July 2009 and in June and July 2010. This amended evidence includes:
25 (HQT-12, document 1 – Judah Rose Rebuttal Testimony on Appendix K issues),
26 in June 2009; (HQT-28, document 1 – Philip Q. Hanser Report on Attachment C-
27 1 for ATC Coordination), in June 2010; and (HQT-8, document 6.1 – Response to

1 Questions 6.5 and 6.6 of Request for Information No. 1 by RNCREQ and UC) in
2 July 2010.

3 In particular, NLH asked me to address the ATC coordination and data exchange
4 that is the subject addressed by HQT witness Philip Hanser. NLH also asked me
5 to comment on certain information provided by HQT witness Judah Rose on
6 Appendix K issues.

7 Q. PLEASE SUMMARIZE YOUR TESTIMONY AND CONCLUSIONS.

8 A. In subsection A, I address Mr. Hanser's testimony. Mr. Hanser sponsors
9 testimony supporting HQT's procedures that are proposed for Attached C-1 to the
10 revised HQT OATT. Attachment C-1 provides the details of HQT's Available
11 Transmission Capacity ("ATC") calculations. The proposed procedures to which
12 Mr. Hanser testifies are meant to satisfy "coordination and data exchange"
13 provisions of Order 890. I address two aspects of the proposed coordination and
14 data exchange. First, the procedures proposed by HQT are a simple
15 "harmonization" process that does not satisfy the coordination or the data
16 exchange principles in Order 890. The harmonization simply requires HQT to
17 adopt the ATC value calculated by an adjacent system if the ATC value
18 calculated by that system is lower than the corresponding value calculated by
19 HQT. On the other hand, the Order 890 requirements envision a more meaningful
20 data exchange that includes participation by transmission customers and
21 introduces transparency to the underlying ATC calculations. I propose HQT
22 develop more a meaningful exchange process that will allow adjacent systems to
23 evaluate the basis for HQT ATC values.

24 The second aspect of the proposed coordination and data exchange procedures
25 relate to the harmonization process itself. This process can lead to undue
26 discrimination in instances when the HQT ATC values decline and the interface
27 becomes oversubscribed. In such a case, HQT has the incentive to allocate the
28 scarce capacity to its affiliate, thereby excluding competitors and providing
29 competitive advantages to its affiliate. I propose that HQT include safeguards in

1 the revised HQT OATT to ensure that the harmonization process cannot be used
2 to discriminate against any transmission customer.

3 In subsection B, I address the additional testimony provided by Mr. Rose in
4 response to certain Information Requests, wherein he expands on his opinion
5 relating to Appendix K issues. In particular, he concludes that a lack of
6 transmission congestion addresses Appendix K non-discrimination objectives.
7 Appendix K was established in Order 890 to achieve two main objectives. One
8 was to integrate individual utility planning activities into a regional process. The
9 second was to prevent undue discrimination through increased participation in the
10 planning process by transmission customers. With respect to the second of these
11 objectives, Mr. Rose suggests that the absence of congestion is a "key aspect" in
12 addressing discrimination. I explain why discrimination does not depend on
13 whether or not congestion is present.

14 A. HQT WITNESS PHILIP HANSER

15 Q. WHAT ISSUES DOES MR. HANSER ADDRESS?

16 A. Mr. Hanser addresses the issue of ATC harmonization proposed by HQT in its
17 Attachment C-1 to the revised HQT OATT. The harmonization process (called
18 "least-common denominator approach" by Mr. Hanser), is a simple process
19 whereby HQT will lower its ATC value when the corresponding ATC value on
20 the neighboring system is lower.

21 Mr. Hanser testifies that this process satisfies the "ATC Coordination and data
22 exchange" requirement of FERC Order 890. He concludes that these procedures
23 "specifically deal with the issue of coordinating and exchanging data and
24 assumptions with neighboring systems to achieve consistent ATC values" (Export
25 Report of Philip Hanser at ¶16). Mr. Hanser's testimony can leave the impression
26 that there is to be some active exchange of information regarding the underlying
27 modeling and assumptions regarding the calculation of HQT ATC values and that
28 this exchange helps ensure consistency in methodologies between HQT and
29 neighboring systems. In fact, in my initial review of his testimony I was

1 reserved on an HQT interface because harmonization can create an over-
2 subscribed interface and the customer may face the situation like Brookfield's
3 where its rollover rights are not honored.

4
5 Q. HOW SHOULD THE REVISED HQT OATT REFLECT THE TREATMENT
6 OF ROLLOVER RIGHTS IN THE HARMONIZATION PROCESS?

7 A. HQT should adopt the policy on rollover rights used by FERC. As indicated
8 above, FERC has required transmission providers to maintain adequate
9 transmission capability to accommodate transmission customers either by
10 building adequate capacity or curtailing customers in a non-discriminatory
11 manner, i.e., *pro rata*.⁷ Because HQT cannot be expected to build new capacity
12 on the neighboring system, if HQT lowers its ATC as a result of the
13 harmonization process and this results in an oversubscribed interface, HQT must
14 invoke the curtailment procedures under section 13.6 of the revised HQT OATT
15 at the time the harmonization occurs.

16 In this process, firm transmission customers with rollover rights would be
17 allocated their *pro rata* share of the reduced capacity. When the transmission
18 term of the firm transmission customers with rollover right expires, the customers
19 can invoke their rollover rights for the portion of the capacity allocated in
20 accordance with the firm curtailment, i.e. its *pro rata* share.

21
22 **B. HQT WITNESS JUDAH ROSE**

23 Q. WHAT ISSUE DO YOU ADDRESS IN MR. ROSE'S TESTIMONY?

24 A. In response to an Information Request, Mr. Rose expands on his testimony
25 regarding the applicability of Order 890 Appendix K to the HQT system. In
26 particular, see Mr. Rose's July response to Information Request No. 1 questions

⁷ *Id.*

6.5 and 6.6 by Regroupement National des Conseils Régionaux de l'environnement du Québec and Union des Consommateurs ("July IR Response").

Appendix K sets out the regional planning requirements of Order 890. In his direct testimony and in his July IR Response, Mr. Rose states that there are two main motivations for FERC proposing Appendix K:

[(1)] acute U.S. transmission problems could, in part, be solved by improved planning. The problems included: (1) insufficient transmission investment, (2) significant transmission congestion, (3) reliability problems and (4) the lack of coordination;" [and]

[(2)] inadequate planning might facilitate discrimination by transmission providers." (July IR Response at ¶2(b)).

While Mr. Rose's direct testimony and his July IR Response have concentrated considerable energy on the first of these two objectives, the issue of how Appendix K is meant to address discrimination has not been developed.

The only reference to how the discrimination concerns are addressed on the HQT system is in Mr. Rose's July IR Response:

A key aspect of potential discrimination discussed in Order 890 is the existence of "significant and recurring congestion". [footnote to Order 890 ¶¶534-5] Thus, it is necessary to understand whether there is "significant and recurring congestion" within the TransEnergie Interconnection when assessing the potential for discrimination and the type of coordinated, open and transparent transmission planning needed.

In essence, the testimony is asserting that a lack of congestion translates to a lack of discrimination. I do not agree.

Discrimination can arise even when congestion is not present. Mr. Rose himself describes discrimination scenarios that do not appear to require congestion:

In theory, a transmission provider ("TP") could discriminate by favoring affiliated generation sources in structuring the grid and grid access so that it unfairly burdens competitors with costs for transmission access or denies them access with comparable terms and conditions available to

1 the TP or affiliates. (Response to NLH Information Request to Mr.
2 Judah Rose, Question 2(a).)

3 I agree that the potential for discrimination is a concern in the United
4 States and that it may be a concern in the rest of North America; my
5 report focuses on the situation in Quebec. (Response to NLH
6 Information Request to Mr. Judah Rose, Question 2(b).)

7 I have not conducted a review of the historical facts and evaluated
8 whether TransÉnergie has used its transmission planning to discriminate
9 against unaffiliated companies in the past. The analysis I performed,
10 which is contained in my July 3rd, 2009 Testimony and my July 13,
11 2010 Response, has not revealed any circumstances in which
12 TransÉnergie would have used its transmission planning to discriminate
13 against unaffiliated companies. (Response to NLH Information Request
14 to Mr. Judah Rose, Question 2(c).)

15 Theoretically, and without regards to preventive measures, TP can offer
16 service that is not comparable to what it provides itself or affiliated
17 companies, or deny service to others. (Response to NLH Information
18 Request to Mr. Judah Rose, Question 6(a).)

19 The unfair allocation of upgrade costs may be caused by various factors.
20 The offer of a service by the TP that is not comparable to what it
21 provides affiliated companies.... may contribute to unfair allocation of
22 upgrade costs (Response to NLH Information Request to Mr. Judah
23 Rose, Question 7(a).)

24 I do not find that executing the various discriminatory strategies identified by Mr.
25 Rose requires "significant and recurring" congestion. It only requires a
26 transmission provider with the incentive to favor its affiliate and the means to do
27 so. As a result, the discrimination concerns underpinning Appendix K which I
28 discussed above, will remain unaddressed if the provisions in Appendix K are not
29 included in the revised HQT Tariff.

30 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

31 A. Yes.

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N^o : R-3669-2008 – Phase 2

RÉGIE DE L'ÉNERGIE

Demande relative à la modification des tarifs et
des conditions des services de transport
d'Hydro-Québec à compter du 1er janvier 2009
(Phase 2).

EVIDENCE

OF THE INTERVENOR

NEWFOUNDLAND AND LABRADOR HYDRO

September 23, 2010

OUTLINE

The present document constitutes NLH's evidence in file R-3669-2008 (Phase II). It deals with one main issue:

HQT's contention that its OATT does not require an equivalent to Attachment K of the *pro forma* OATT that FERC adopted in orders 890, 890-A and 890-B, on the basis that HQT's transmission planning already meets the requirements of FERC's aforementioned orders.

HQT's witness Judah Rose has provided testimony on this issue. HQT originally filed the *Rebuttal Testimony of Judah Rose on behalf of TransEnergie*¹ on July 3, 2009, in which Mr. Rose makes a general statement on HQT's transmission planning process at page 52. HQT also filed Mr. Rose's *Response to Questions 6.5 and 6.6 of the Request for Information No. 1 Presented before the Régie by RNCREQ and UC*², on July 13, 2010, on the specific issue of HQT's transmission planning process.

This last response to the intervenors' request for information is what led NLH to file the present document.

According to Mr. Rose, the various regulatory processes and forums that oversee HQT's activities already meet the requirements envisioned in FERC Order 890 for transmission planning and, according to Mr. Rose; HQT does not need to include an equivalent Attachment K in its *pro forma* OATT.

NLH challenges HQT's contention and Mr. Rose's testimony. Specifically, we will explain that the "coordination" requirement envisioned in Attachment K of FERC Order 890 is not met by the *various elements of HQT's actual planning processes* identified by Mr. Rose. We will also demonstrate that, to achieve FERC's goals or to prevent undue discrimination in transmission planning in Québec, the current planning process is insufficient – an Attachment K is required for HQT's OATT.

¹ HQT-12, document 1

² HQT-8, Document 6.1

At page 52 of the document entitled *Rebuttal Testimony of Judah Rose on behalf of TransEnergie*³ (the “**Rebuttal**”), Mr. Judah Rose concluded that:

“TransEnergie is not required to file Attachment K under Order 890 at the U.S. FERC. TransEnergie can have a planning process tailored to its unique conditions, many of which are superior in terms of meeting the goals of Attachment K compared to U.S. utilities.”

In a request for information dated May 19, 2009, intervenors’ RNCREQ and UC asked HQT to answer the following questions:

“R6.5. Does the Transmission Provider’s planning process comply with the principles and other requirements of Order 890, described in paragraphs 444 ff.? If it does, please specify how the Transmission Provider’s process meets the FERC’s requirements.

If it does not, please indicate exactly why the Transmission Provider considers that it should not modify its planning process so as to meet the said requirements, in regard to the [components identified at paragraphs 445 to 602 of FERC order 890]

R6.6. Please specify, for each of the components mentioned in paragraph 602 of Order 890, why the Transmission Provider does not consider that such component should be included in its Rates and Conditions”

In response to this request for information, HQT filed, on July 13, 2010, Mr. Rose’s *Response to Questions 6.5 and 6.6 of the Request for Information No. 1 Presented before the Régie by RNCREQ and UC*⁴ (the “**Response**”); this Response is in two parts:

- in the first part, Mr. Rose explains that, in his opinion, it is “*not necessary for HQT to adopt Attachment K in order to offer open and comparable access to its transmission system*”;
- in the second part, he states his opinion that “*the various elements of HQT’s actual planning processes, when combined, given HQT’s unique situation and the regulatory environment in which it operates, allow HQT to offer coordinated, open and transparent planning that is comparable to Attachment K.*”

In attempting to support the first part of his Response, Mr. Rose addresses transmission congestion, transmission investments, transparency, and coordination mechanisms. With respect to transparency and coordination, Mr. Rose describes the various processes in which, in his opinion, HQT meets the transmission planning requirements of FERC order 890.

NLH will provide evidence herein that challenges the conclusions provided by Mr. Rose’s testimony. Specifically, we will explain that the “coordination” requirement of Attachment K, described at paragraphs 444 to 454 of FERC Order 890, is not met by the “*various elements of HQT’s actual planning processes*” identified by Mr. Rose in his testimony.

³ HQT-12, document 1, page 49

⁴ HQT-8, Document 6.1, filed July 13, 2010

Our evidence herein is presented in two main sections. In Section I we discuss the key aspects of FERC Order 890 regarding coordination and transmission planning. In section II, we discuss the various regulatory processes which Mr. Rose cites as the as satisfying the planning requirements in Attachment K. This includes regulatory processes associated with transmission investment, HQT strategic planning, ratemaking, environmental review and OATT procedures. We will explain that these processes, either individually or combined, do not meet the requirements of FERC Order 890 for transmission planning.

I. FERC Order 890 on Transmission Planning

Before addressing the issue of whether HQT's planning process meets the "coordination requirement" of FERC order 890, in the section we examine the specific requirements of FERC order 890, with respect to coordination:

"2. Planning Principles

444. We set forth below the planning principles that must be satisfied for a transmission provider's planning process to be considered compliant with the Final Rule. The NOPR identified eight such principles, but based on the comments received the Commission will require compliance with nine – the original eight plus a cost allocation principle, as described further below.

a. Coordination

445. In the NOPR, the Commission proposed that transmission providers must meet with all of their transmission customers and interconnected neighbours to develop a transmission plan on a non-discriminatory basis. We sought comment on specific requirements for this 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 deemed important by commenters.

(...)

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 requirements 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.

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 neighbours, 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 meet this requirement by facilitating the formation of a permanent planning committee made up of itself, its neighbouring 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.

453. In response to the concerns of some commenters, we clarify that transmission providers are not required to meet with customers and other stakeholders that choose not to meet. Transmission providers cannot force others to meet with them. Transmission providers are, however, required to craft a process that allows for a reasonable and meaningful opportunity to meet or otherwise interact meaningfully. We also clarify that the coordination requirements imposed in this Final Rule are intended to address transmission planning issues, and are not intended to provide a forum for ancillary issues,

such as specific siting concerns, which are better addressed elsewhere. As for NRECA's concern that transmission providers must plan for their nonjurisdictional network customers even if they decline to fully participate in the planning process, a transmission provider cannot be expected to effectively plan for a customer if that customer declines to engage in the planning process. Therefore, we encourage NRECA and non-public utilities to participate fully in the planning process.

454. In response to the suggestion by some commenters that we require transmission providers to allow customers to collaboratively develop transmission plans with transmission providers on a co-equal basis, we clarify that transmission planning is the tariff obligation of each transmission provider, and the pro forma OATT planning process adopted in this Final Rule is the means to see that it is carried out in a coordinated, open, and transparent manner, in order to ensure that customers are treated comparably. Therefore, the ultimate responsibility for planning remains with transmission providers. With this said, we fully intend that the planning process adopted herein provide for the timely and meaningful input and participation of customers into the development of transmission plans. This means that customers must be included at the early stages of the development of the transmission plan and not merely given an opportunity to comment on transmission plans that were developed in the first instance without their input.⁵

[Our underlining.]

This last statement is crucial – transmission planning should not be limited to an after-the-fact or *ex post* approval of investment projects that are previously developed by the transmission provider (alone, or, in certain cases, with his distribution affiliate); instead, transmission planning is meant to be a coordinated effort where customers are *included at the early stages of the development of the transmission plan and not merely given an opportunity to comment on transmission plans that were developed in the first instance without their input.*

In making this statement, FERC was confirming statements made by some intervenors according to whom transmission planning was not conducted openly, but rather internally, by the transmission provider, with the RTO's and regulatory agencies rubber-stamping *ex post* their transmission plans:

“Comments

429. Most commenters support the development of coordinated, open, and transparent planning. While differing on how they should be implemented, commenters express broad support for the eight planning principles, though all RTOs and ISOs and many investor-owned utilities believe

⁵ FERC Order 890, paragraphs 444 and ff.

that their planning processes already comply with the proposals in the NOPR. ISO/RTO Council, as well as individual RTOs and ISOs, advance the position that RTOs and ISOs already meet the planning requirements in the NOPR, that there has been no credible case made for reopening their already approved planning processes, and that RTOs and ISOs should be exempt from complying with the NOPR's planning principles.

430. Some transmission providers agree that RTOs already meet the principles, and others argue against commenters who maintain that RTOs "rubber stamp" transmission provider plans. For example, MISO asserts that it conducts an open planning process and does not "rubber stamp" projects. Duke concurs with MISO, stating that there are abundant opportunities for participation in the MISO planning process. Xcel also replies in support of the MISO process.

431. Several transmission customers, however, argue that current RTO processes are insufficient because, among other things, they merely accept the transmission owners' plans and only provide for after-the-fact input, thus failing to satisfy the planning principles proposed in the NOPR. (...)⁶

[Our underlining]

By requiring that transmission customers and other stakeholders be included in the early stages of transmission planning, FERC's goal was to eliminate some of the existing opportunities for undue discrimination:

"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." 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." 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 favourable than those they apply to their own transmissions."

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 network customers and to expand their systems to provide service to point-to-point customers, there is no requirement that the overall transmission planning process be open to customers, competitors, and state commissions. 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.

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

⁶ FERC order 890, paragraphs 429-431

and discrimination occur primarily after-the-fact because there is insufficient coordination and transparency between transmission providers and their customers for purposes of planning. 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. As we explain above, our authority to remedy undue discrimination is broad. In addition, new section 217 of the FPA requires the Commission to exercise its jurisdiction in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of LSEs. A more transparent and coordinated regional planning process will further these priorities, as well as support the DOE's responsibilities under EPCRA 2005 section 1221 to study transmission congestion and issue reports designating National Interest Electric Transmission Corridors and the Commission's responsibilities under EPCRA 2005 section 1223."⁷

[Our underlining]

This was also discussed in relation to transparency and:

"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, 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 fulfill 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."

[Our underlining]

Furthermore, in the part of the Order related to determining "Significant and Recurring" congestion, FERC insisted on the part played by stakeholders (including transmission customers) in network planning. FERC requested that transmission providers adopt an approach that ensures *that economic studies required under this principle are focused on customer needs and concerns, not administratively determined metrics that may bear no necessary relation to those concerns*:

"Commission Determination

542. The Commission adopts the NOPR proposal and retains a congestion study principle as part of the Final Rule's transmission planning process; however, we modify and clarify the principle in certain important respects in response to the comments received. At the outset, we wish to clarify

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FERC order 890, paragraphs 423-425

that our primary objective in adopting this principle is to ensure that the transmission planning process encompasses more than reliability considerations. Although planning to maintain reliability is a critical priority, it is not the only one. Planning involves both reliability and economic considerations. When planning to serve native load customers, a prudent vertically integrated transmission provider will plan not only to maintain reliability, but also consider whether transmission upgrades or other investments can reduce the overall costs of serving native load. Such upgrades can, for example, reduce congestion (redispatch) costs or integrate efficient new resources (including demand resources) and new or growing loads. Thus, to represent good utility practice and provide comparable service, the transmission planning process under the pro forma OATT must consider both reliability and economic considerations. The purpose of this principle is to ensure that the latter is considered adequately in the transmission planning process.

(...)

547. The Commission will modify the principle to allow customers to choose the studies that are of the greatest value to them. Specifically, we are modifying the principle to require that stakeholders be given the right to request a defined number of high priority studies annually (e.g., five to ten studies) to address congestion and/or the integration of new resources or loads. The intent of this approach is to allow customers, not the transmission provider, to identify those portions of the transmission system where they have encountered transmission problems due to congestion or whether they believe upgrades and other investments may be necessary to reduce congestion and to integrate new resources. The customers should be able to request that the transmission provider study enhancements that could reduce such congestion or integrate new resources on an aggregated or regional basis without having to submit a specific request for service. This approach ensures that the economic studies required under this principle are focused on customer needs and concerns, not administratively determined metrics that may bear no necessary relation to those concerns. Once such studies are requested, the transmission provider would conduct the studies, including appropriate sensitivity analyses, in a manner that is open and coordinated with the affected stakeholders. The cost of the defined number of high priority studies would be recovered as part of the overall pro forma OATT cost of service. By limiting this principle to a defined number of high priority studies annually, we are not precluding stakeholders from requesting additional studies. However, to provide appropriate financial incentives, the stakeholder(s) requesting these additional studies would be responsible for paying the cost of such studies.”⁸

[Our underlining and emphasis]

In confirming the transmission planning requirements developed in Order 890, FERC, in Order 890-A, reiterated the need for an *ex ante* transmission planning process involving customers, in which necessary planning information is shared with them:

“4. We also commend transmission providers for the substantial resources dedicated to the development of transmission planning processes in response to Order No. 890. Transmission providers and stakeholders recently submitted tariff proposals that will govern transmission planning under the pro forma OATT. Transmission planning is critical because it is the means by which customers consider and access new sources of energy and have an opportunity to explore the feasibility of non-transmission alternatives. It is therefore vital for each transmission provider to open its transmission planning process to customers, coordinate with customers regarding future system plans, and share necessary planning information with customers.”⁹

[Our underlining]

⁸ FERC order 890, paragraphs 542-547

⁹ FERC Order 890-A, paragraph 4

In this subsequent order, FERC underlined the link between coordinated *ex ante* planning processes and eliminating the potential for undue discrimination in transmission planning:

“a. Coordination

182. In order to satisfy the coordination principle, transmission providers must provide stakeholders the opportunity to participate fully in the planning process. 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 neighbours, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers regarding the development of transmission plans, allowing customers to participate in the early stages of development.”¹⁰

In short, FERC has expressed the view that a coordinated, transparent and open transmission planning process which includes all transmission customers, is essential in preventing undue discrimination, whereas after-the-fact or *ex post* review of transmission planning, conducted in isolation, does not provide such protection.

As indicated in the quote above, reducing the amount of system planning activities that are conducted in isolation also applies as an objective in planning conducted between neighbouring systems. In fact, FERC established the Principle of Regional Participation as one of its nine planning principles. FERC’s Order 890 directed transmission providers to coordinate with interconnected systems to (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and (2) identify system enhancements that could relieve congestion or integrate new resources. This is what FERC said:

“Commission Determination

523. We adopt the NOPR’s proposal to include a regional participation principle as a component of the Final Rule’s transmission planning process. Accordingly, in addition to preparing a system plan for its own control area on an open and non-discriminatory basis, each transmission provider will be required to coordinate with interconnected systems to (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and (2) identify system enhancements that could relieve congestion or integrate new resources (discussed further below).”¹¹

II. Mr. Rose’s Testimony and Regulatory Processes in Quebec

In this section we address each of the regulatory processes introduced by Mr. Rose and explain why in reality the processes do not provide the planning and coordination envisioned in Order 890. First we summarize Mr. Rose’s opinion and then we evaluate each of the processes that, according to Mr. Rose, satisfy the FERC Order requirements.

¹⁰ FERC order 890-A, paragraphs 182

¹¹ FERC order 890, paragraphs 523

In this regard, we address the Régie process for authorizing transmission investments, HQT strategic planning, ratemaking, environmental review and the OATT.

(1) Mr. Rose's Testimony

In his Testimony, Mr. Rose's presentation of the requirements of FERC Order 890 for transmission planning is flawed as it fails to take into account the aforementioned views expressed by FERC. Mr. Rose does not discuss the fact that transmission customers should be included in the early stages of transmission planning. In contrast, to support his assertion that transmission planning occurs in Québec, Mr. Rose lists forums which provide, at best, an *ex post* or after-the-fact review of certain aspects of HQT's transmission planning developed internally.

This is precisely the type of behaviour that FERC has identified as potentially leading to undue discrimination.

Although Mr. Rose mentions that HQT's customers could take part in some of these processes, he fails to examine the issue of whether they actually do.

In the foregoing, we discuss, for each forum mentioned by Mr. Rose as part of HQT's transmission process, the reason for which it does not meet the requirements of FERC order 890 for transmission planning. In each of these forums, three themes recur: (i) Only an *ex post* review of transmission planning is provided for; (ii) HQT customers are *de facto* not invited to participate; and (iii) Information given to intervenors is limited and does not allow them to *determine whether the plan developed by the transmission provider, in isolation, is unduly discriminatory*.

(2) HQT's Planning Process

Mr. Rose alleges that transmission planning takes place through the Régie's process for the approval of HQT's investments, Hydro-Québec's Strategic Plans (the latest being the 2009-2013 Strategic Plan), HQT's annual rate cases, the BAPE, and in the OATT procedures. We will briefly discuss each of these processes and explain why these do not meet the requirements of FERC order 890 on transmission planning.

(a) Investment files

The Régie process for authorizing investment projects, under Section 73 of the *Régie de l'énergie Act*, clearly does not meet the "coordination requirement" as it is an *ex post* or "after the fact" process aimed at approving investment decisions. Under FERC order 890, transmission planning must include transmission customers at the early stages of the development of the transmission plan.

Furthermore, regarding investment projects, the Régie indicated, last year, that its role was, essentially, to defend the public interest (environmental and socio-economical considerations) and to control costs; it says nothing of the goal of promoting fairness in transmission planning:

[Our Translation] “**3. RÉGIE’S OPINION**

[39] This Bench deems it necessary to respond to certain comments by RNCREQ. This intervenor’s observations indicate that it wishes to bring the Régie to a level of intervention which the Régie has not deemed appropriate for this type of file in the past. Such an approach shows a poor understanding of the Régie’s role regarding authorization of projects under section 73 of the Régie Act.

[40] First of all, it would be unrealistic and very cumbersome to discuss in a public hearing HQT’s choices on the different ways to upgrade or maintain its equipment in the four corners of the Province. This would be a never-ending process. Regulation has to be intelligent – this is not a new concept.

[41] The legislator in fact recognized this by not imposing the obligation to hold a public hearing to deal with applications for the authorization of construction projects under section 73 of the Act.

[42] The Régie is neither responsible for approving HQT’s drawings and specifications nor to design its transport network in its place. This is HQT’s responsibility.

[43] Essentially, the Régie must ensure that all the projects that are submitted for its approval meet public interest objectives and that their costs are reasonable. The Régie considers that this is presently the case.”

[Original French version] “**3. OPINION DE LA RÉGIE**

[39] La présente formation croit nécessaire de répondre à certains commentaires du RNCREQ. Les observations de l’intéressé indiquent qu’il veut amener la Régie à un niveau d’intervention dans ce type de dossiers où la Régie n’a pas jugé bon d’aller dans le passé. Cette approche tient d’une mauvaise compréhension du rôle de la Régie en matière d’autorisation de projets sous l’article 73 de la Loi.

[40] D’abord, il serait irréaliste et fort laborieux de discuter en audience publique des choix du Transporteur sur les différentes façons d’améliorer ou d’entretenir ses installations aux quatre coins de la province. Cela n’en finirait plus. La réglementation doit être intelligente et l’idée n’est pas nouvelle.

[41] Le législateur l’a d’ailleurs reconnu en n’imposant pas l’obligation de tenir une audience publique pour traiter les demandes d’autorisation de projets de construction en vertu de l’article 73 de la Loi.

[42] La Régie n’est pas là pour approuver les plans et devis du Transporteur ni pour faire le design du réseau de transport à sa place. Ces responsabilités incombent au Transporteur.

[43] Essentiellement, la Régie doit s'assurer que les projets qui lui sont soumis pour approbation rencontrent des objectifs d'intérêt public et que les coûts du projet sont raisonnables. La Régie considère que tel est le cas du Projet.¹²

[Our underlining]

The Régie's investment authorization process is not a "planning process" fulfilling the coordination requirement of FERC order 890, but rather a "public interest and cost-oriented approval process." This is confirmed by the fact that HQT's customers generally do not participate in these files; instead, we mainly find public-interest intervenors such as environmental groups and organizations defending the interests of electricity consumers.

In the annual investment files for projects under \$25 million, only two of HQT customers' have intervened (BEMI and OPG). In a total of nine files, they intervened only three times.¹³ As for the investment files for specific projects above \$25 million, a total of three HQT customers have intervened (NLH, ÉLL, and BEMI, the last two being affiliated entities), and they did so in only three out of 33 files.¹⁴

NLH's contention here is not that HQT customers are physically prevented from intervening in these files, but that they are not interested to do so because true transmission planning does not take place in these files. This is also a consequence of the intervenors' role in such files and the scope allowed for their interventions. In Régie files, intervenors are required to limit their interventions to the approval of the project(s) in question; they are not meant to interact meaningfully with regards to transmission planning.

NLH has already attempted, in an investment file, to have HQT and the Régie look at other options than those submitted by HQT for the Régie's consideration:

[Our Translation] "[46] Finally, NLH concludes that the Régie does not hold all the necessary information to make an enlightened decision on the Project. NLH submits that different possibilities exist for the use of the resources available South of the constraint line, such as the generation of the Beauharnois station and the input of energy via the Radisson converter, and that these could lighten the traffic coming from the North, thus rendering unnecessary or premature, perhaps, the equipment which was proposed for the project."

[Original French version] "[46] Finalement, NLH conclut que la Régie n'a pas en mains toute l'information requise pour prendre une décision éclairée sur le Projet. NLH suggère que des possibilités d'utilisations différentes des ressources disponibles au sud de la ligne de contrainte, comme la production de la centrale de Beauharnois et l'apport d'énergie via le convertisseur de Radisson, pourraient alléger le transit venant du nord et ainsi peut-être rendre inutiles ou prématurés les équipements proposés dans le Projet."¹⁵

¹² Decision D-2009-140 issued in file R-3705-2009 on October 23, 2009.

¹³ See the list of HQT annual investment files for projects under \$25 million attached as Appendix I.

¹⁴ See the list of HQT investment files for specific projects over \$25 million attached as Appendix II.

¹⁵ Decision D-2009-109 issued in file R-3696-2009 on August 25, 2009.

[Our underlining]

The Régie rejected this request on the basis that the choice of the options considered in an investment file is HQT's prerogative – HQT can therefore limit the scope of a file:

[Our Translation] “[56] The Régie reiterates that in the current regulatory framework, the choice of the solution and the choice of the alternative or alternatives presented in these files is HQT's prerogative. It is clear, upon reading this file, that HQT has considered certain technical solutions which it has quickly set aside because, *inter alia*, of excessive costs. The Régie considers that the alternatives presented here meet the requirements of the Regulation

[57] The Régie has already decided, in its decision D-2009-85, upon the quality and quantity of information disclosed in response to requests for information and can only reiterate here that these answers are satisfactory for the appropriate processing of the file.”

[Original French version] “[56] La Régie rappelle que dans le cadre réglementaire actuel, le choix de la solution et le choix de l'alternative ou des alternatives présentées au dossier sont les prérogatives du demandeur. Il est clair à la lecture du dossier que le Transporteur a envisagé des solutions techniques qu'il a rapidement écartées pour, entre autres, des motifs de coûts excessifs. La Régie considère que les solutions alternatives présentées rencontrent les exigences du Règlement.

[57] La Régie s'est déjà prononcée dans sa décision D-2009-85 sur la qualité et la quantité des informations fournies en réponse aux demandes de renseignements et elle ne peut ici que réitérer que les réponses données sont satisfaisantes pour un traitement adéquat du dossier.”¹⁶

[Our underlining]

Decision D-2009-85, referred to in this excerpt, was a procedural decision rendered in the same file, dismissing the request, by NLH, to have the Régie order HQT to answer some of its requests for information in greater detail. Among these, we find the following questions that NLH had originally asked HQT to answer:

“Q4. Did the analysis consider a 735 - 315 kV tie at Bout-de-Île, for example, to redistribute load in a more southern direction so that southern generation would provide the necessary voltage support and alleviate the voltage issues associated with the increased north south load? What is the status of a new 735 kV tie in the south? Its in service date?

a. When will the station Bout-de-l'Île be brought up to 735kV?”¹⁷

These were HQT's answers:

[Our Translation] “R.4 First of all, HQT reiterates that it has considered many different means of supply or reduction of the needs for reactive power, as evidenced by exhibit HQT-2, Document 1, pages 6 to 8. As mentioned in this exhibit, HQT has quickly eliminated the analysis of the construction of new transmission lines given the high cost of this option with respect to other possibilities.

¹⁶ Decision D-2009-109 issued in file R-3696-2009 on August 25, 2009.

¹⁷ Document C-3-5 filed by NLH on June 4, 2009 in file R-3696-2009

Specifically, HQT mentions that adding a 735 kV section to the Bout-de-l'Île substation was considered but was not retained as a solution for the present project because this option did not provide the necessary reactive support at an appropriate cost to meet the objectives sought.

HQT reiterates that the objectives sought are met by the current project and that adding or not adding another 735 kV line to this substation has no impact on the levelling of the main transmission network.

R4a. HQT reiterates that adding another 735 kV section to the Bout-de-l'Île substation is not part of the present project.”

[Original French version] “R4. D’entrée de jeu, le Transporteur rappelle qu’il a considéré plusieurs moyens de fourniture ou de réduction des besoins en puissance réactive comme en fait foi la pièce HQT-2, Document 1, pages 6 à 8. Tel que mentionné à cette pièce, le Transporteur a éliminé rapidement de l’analyse la construction de nouvelles lignes de transport étant donné le coût important de cette option par rapport aux autres possibilités.

Plus spécifiquement, le Transporteur mentionne que l’addition d’une section à 735 kV au poste Bout-de-l’Île a été considérée mais n’a pas été retenue pour les fins du présent projet car elle ne permet pas de fournir le soutien réactif nécessaire à un coût acceptable pour rencontrer les objectifs visés.

Le Transporteur réitère que les objectifs visés sont rencontrés par le présent projet et l’addition ou non d’une nouvelle ligne à 735 kV à ce poste n’a pas d’impact sur le projet de mise à niveau du réseau de transport principal.

(...)

R4a. Le Transporteur rappelle que l’addition d’une section à 735 kV au poste Bout-de-l’Île ne fait pas partie du présent projet.”¹⁸

It is interesting to note the link between “coordination” and “transparency” in this excerpt – HQT refuses to answer Q4a on the basis that the Bout-de-l’Île substation was not part of that particular investment file, but claims to have studied it. If it was studied, it is therefore relevant. Why then did HQT refuse to share this information with the intervenors?

If the investment files are an actual “transmission planning process”, projects would be considered within a broader “transmission planning context”, including other, related, parts of HQT’s network. HQT’s answer to NLH demonstrates that HQT may have considered such a broad context but does not feel that it should share its information on this broad context with intervenors since it does not deal specifically with the project under consideration.

In dismissing this request, the Régie confirms that the scope of a given investment file is limited to the project being submitted for approval therein, and is not meant to consider other projects which have not yet been approved:

¹⁸ HQT-10, Document 1, filed on June 16, 2009 in file R-3696-2009

[Our Translation] “[17] The relevance of a request for information is determined by the link, the connection between an allegation in the application [before the Régie] and the information sought by the information request. The evidence sought must be a fact which logically would have evidentiary weight with respect to the goal of the proceeding.

[18] In the case at hand, it is clear from HQT’s answers that only projects which have been approved are considered for the study. What is possible, and even what is likely to happen, has not been and should not be considered when levelling the network.

[19] Taking such things into account would lead HQT to indefinitely postpone the levelling of its network and to include thereto undertakings, and costs related thereto, which require design studies and which need to be paid for, in part, by specific clients.

[20] In light of HQT’s comments which, as a side note, are coherent with all the evidence it has filed, the Régie is satisfied with the answers given to NLH.”

[Original French version] “[17] La pertinence d’une demande de renseignements se détermine par le lien, la connexité entre un fait allégué dans la requête et l’information visée par la demande. L’élément de preuve ainsi recherché doit être un fait qui aurait logiquement une valeur probante à l’égard du but de la procédure.

[18] Dans le cas présent, il est clair des réponses du Transporteur que seuls les projets approuvés sont pris en compte pour l’étude. Ce qui est possible et même probable par la suite n’a pas été pris en compte et ne doit pas l’être non plus pour les fins de mise à niveau du réseau.

[19] Pareille prise en compte pourrait amener le Transporteur à remettre indéfiniment la mise à niveau et à y inclure des travaux, et partant des coûts, devant faire l’objet d’études d’avant-projets et devant être payés en partie par des clients particuliers.

[20] À la lumière des commentaires du Transporteur, par ailleurs cohérents avec l’ensemble de la preuve qu’il a déposée, la Régie est satisfaite des réponses fournies à NLH.”¹⁹

[Our underlining]

One issue which could be of interest to HQT customers is the real impact on current transmission rates of investment projects adopted in previous Régie files.²⁰ In D-2010-056²¹, an investment file considered last year, a public-interest intervenor raised the issue that, although in previous investment files HQT asserted that the proposed investments would lead to a decrease in transmission tariffs, this does not present itself in rate cases. The intervenor recommended that there be a follow-up on the impact of investment projects on tariffs in the yearly (under \$25 million) investment files:

[Our Translation] “[82] The FCEI is preoccupied with the impacts on tariffs of HQT’s investments. In previous investment files, HQT has often demonstrated that the investments

¹⁹ Decision D-2009-085 rendered in file R-3696-2009 on July 3, 2009

²⁰ “Real” impacts of projects previously approved as opposed to “prospective” impacts of projects being considered for approval in a given file.

²¹ Decision D-2010-056 issued in file R-3707-2009 on May 14, 2010

sought would create a downwards pressure on transmission tariffs. Yet these tariff decreases are never visible in rate cases. The FCEI therefore recommends that a follow-up of the real impact on tariffs of investments be instituted for investment files of less than 25M\$."

[Original French version] "[82] La FCEI est préoccupée par les impacts tarifaires des investissements du Transporteur. Dans les dossiers d'investissements antérieurs, le Transporteur a souvent démontré que les investissements amèneraient un impact à la baisse sur les tarifs de transport. Or, ces baisses tarifaires ne sont jamais visibles dans les dossiers tarifaires. La FCEI recommande qu'un suivi de l'impact tarifaire réel des investissements soit instauré dans le cadre des dossiers de demandes d'investissements de moins de 25 M\$."

The Régie said that it was not appropriate to require from HQT to file a follow-up of the real impact of investments on rates:

[Our Translation] "[85] The Régie deems it inappropriate to require that HQT file a follow-up on the real impact of investments on tariffs. The Régie considers that such a follow-up is not necessary to determine if the investments budgets requested by HQT for a given year are warranted. Furthermore, such a follow-up would only provide a partial explanation of the global impact on tariffs which is a consequence of many factors."

[Original French version] "[85] La Régie juge qu'il n'est pas approprié de requérir du Transporteur qu'il dépose un suivi de l'impact tarifaire réel des investissements. La Régie considère qu'un tel suivi n'est pas nécessaire pour juger si les budgets d'investissements demandés par le Transporteur pour une année donnée sont requis. De plus, un tel suivi ne fournirait qu'une explication partielle de l'impact tarifaire global qui est la résultante de plusieurs autres paramètres."

Clearly, Régie investment files have not evolved into a transmission planning process that meets the requirements of FERC order 890. The most important flaw, in this regard, is that the Régie merely approves investments, on a case-by-case basis. This is not only an after-the-fact or *ex post* process, it is one that only considers one aspect of HQT's transmission planning at a given time. Also, generally, the information provided by HQT in this process is insufficient to fully assess HQT's transmission planning: intervenors' requests for information are limited by the scope of each file.

(b) HQ's Strategic Plan

Mr. Rose alleges that transmission planning takes place through HQ's Strategic Plans, which are to be approved by the *Assemblée nationale*.

The 2009-2013 Strategic Plan was discussed by the *Committee on Agriculture, Fisheries, Energy and Natural Resources* on October 6 and 7, 2009. According to the *Journal des débats*, none of HQT's customers intervened in this process; the only intervenors were members of parliament and Hydro-Québec representatives.²² This is confirmed by the

²² <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/CAPERN/mandats/Mandat-8097/index.html>

report filed with the *Assemblée nationale* which states that the only people present during this process were members of parliament and Hydro-Québec representatives.²³

Once again, HQT's "transmission planning process" does not meet the coordination requirement since none of HQT's customers take part in this process, and even if they did, it would once again be an *ex post* intervention consisting of commenting on a transmission plan which has already been developed without their input.

The only clients of HQT's whose specific interests are considered in this process are HQD and HQP. Actually, the heads of both HQT and Hydro-Québec described HQT as the link between the producer (HQP) and distributors (notably, HQD) – and not, generally, as a transmission provider with many clients:

[Our Translation] "Presentation by
Ms. Isabelle Courville, president

(...)

HQT, that's the link (the "hyphen") between HQP and HQD. Hydro-Québec needs to be able to rely on the flawless operational performance of its transmission division in order to achieve its objectives and meet its clients' expectations. From this, stem our orientations for the period 2009-2013, which are: ensuring the quality of our service, increasing the network's capacity, and making our division perform even better.

(...)

Mr. Vandal (Thierry): Maybe, this question requires a bit of context. HQT, as Ms. Courville explained, is the link – the hyphen – between the producer and distributors. Therefore, in this context, this additional interconnection with the USA, New Hampshire, that's the link (hyphen) between HQP, with the new generation, for instance, of the Romaine, and distributors in New England, mainly, here, NSTAR and Northeast Utilities. And the junction between the two, it's a project which is a project, in Québec, of HQT, and a project in partnership with HQT and American transmission providers, on which Ms. Courville can say a few words."

[Original French version] "Présentation de
Mme Isabelle Courville, présidente

(...)

TransÉnergie, c'est le trait d'union entre Hydro-Québec Production et Hydro-Québec Distribution. Hydro-Québec doit pouvoir compter sur une performance opérationnelle sans faille de sa division de transport pour atteindre ses objectifs et répondre aux attentes de ses clients. De ceci découlent nos orientations pour la période 2009-2013, soit: assurer la qualité du service, accroître la capacité du réseau et rendre la division encore plus performante."²⁴

²³

http://www.assnat.qc.ca/media/Process.aspx?MediaId=ANQ.Vigie.Bll.DocumentGenerique_20899&process=Original&token=ZyMoxNwUn8ikQ+TRKYwPCjWrKwg+vIv9rjij7p3xLGTZDmLVSmJLoqe/vG7/YWzz

²⁴ *Journal des débats de la Commission de l'agriculture, des pêcheries, de l'énergie et des ressources naturelles*, le 7 octobre 2009, Vol. 41 N° 9, Examen du plan stratégique 2009-2013 d'Hydro-Québec

(...)

"M. Vandal (Thierry): Peut-être, cette question nécessite une mise en contexte. TransÉnergie, comme Mme Courville l'a mentionné, est le trait d'union entre le producteur et les distributeurs. Donc, dans ce contexte-là, cette interconnexion avec les États-Unis additionnelle, New Hampshire, c'est un trait d'union entre Hydro-Québec dans son activité de production, avec la nouvelle production, par exemple, de projets comme Romaine, et des distributeurs en Nouvelle-Angleterre, principalement, ici, là, NSTAR puis Northeast Utilities. Et la jonction entre les deux, c'est un projet qui est un projet, au Québec, de TransÉnergie et un projet en partenariat TransÉnergie avec des transporteurs américains, dont Mme Courville peut dire un mot."²⁵

One would expect that in a "coordinated transmission planning process", the main focus would be on the transmission provider, its business and its clients' needs. However, before the *Committee on Agriculture, Fisheries, Energy and Natural Resources*, HQT's business is presented as secondary and ancillary to that of Hydro-Québec ("it's the hyphen between HQD and HQP"). HQT is not viewed as a functionally separated entity with its own interests (the development of a transmission grid and of a clientele) but rather as a means of furthering the interests of Hydro-Québec.

(c) *Rate cases*

In paragraph 37 of his Response, Mr. Rose states that *since 2000, there is a Transmission System Planning Description as part of TransÉnergie's filing*. The term "description" is important – the fact that HQT describes its planning process to the Régie does not mean that HQT includes its customers in a "coordinated planning process"; it is yet another *ex post* exercise consisting of (partly) examining a plan that HQT has developed.

As a recent example, in Phase I of the current file (R-3669-2008), HQT summarily described this process:

[Our Translation] "2.1.3 Transmission Network Planning Process

The process used by HQT for the purpose of the transmission planning of its network is over a ten-year span and allows a global point-of-view on the issues, problematics and needs which underlie the actions undertaken to meet the clients' needs with the expected quality.

HQT aims at establishing an assessment under two planning periods – a first period of five years with greater detail on specific projects, followed by planning of the next five years which consists of an estimate of planned investments.

Thus, HQD's needs in relation to supplying the native load, producers' requests, needs related to longevity, to technological innovation, to quality upgrades, or to compliance with norms and external regulation, as well as needs for the conduct of the network and telecommunications needs are assessed. The needs are based on the information available and foreseeable that is likely to materialize, putting in perspective different scenarios to ultimately choose the optimal scenario on technical, economical, and environmental grounds.

These investment needs are established using parametric costs, partly because a certain degree of uncertainty is linked, for example, to the materialization of certain projects related to growth, and also because the materialization of transmission projects span across many years. Projects related to maintenance or sustainability can also be hastened or postponed since HQT will benefit from growth projects in order to optimize the solution to a problematic in a specific area or in relation to specific equipment.

To this end and as mentioned, HQT has established teams which are dedicated to the optimization of the network planning process in order to better manage its projects portfolios.”

[Original French version] “**2.1.3 Démarche de planification du réseau de transport**

La démarche appliquée par le Transporteur aux fins de la planification du réseau de transport porte sur un horizon de dix ans et permet d’avoir une vision globale des enjeux, problématiques et besoins qui sont sous-jacents à des actions à mettre en oeuvre afin de rencontrer les besoins des clients avec la qualité attendue.

Le Transporteur vise à établir le bilan selon deux périodes de planification, soit une première période de cinq ans comportant plus de précisions sur les projets spécifiques, suivie d’une planification des cinq années suivantes qui consiste en une estimation des investissements prévus.

Ainsi, les besoins d’Hydro-Québec dans ses activités de distribution d’électricité (le « Distributeur ») pour l’alimentation de la charge locale, les demandes des producteurs, les besoins en pérennité, les besoins en innovation technologique, les besoins en amélioration de la qualité ou en respect des normes et de la réglementation externe, de même que les besoins pour la conduite du réseau et en télécommunications sont évalués. Ces besoins sont basés sur des informations disponibles et prévisibles qui ont de bonnes probabilités de se réaliser mettant en perspective différents scénarios pour enfin choisir le scénario optimal sur les plans technique, économique et environnemental.

Ces besoins d’investissements sont établis en coûts paramétriques, notamment parce qu’un certain degré d’incertitude est relié, par exemple, à la réalisation de certains projets de croissance et aussi parce que la réalisation des projets de transport s’étendent sur plusieurs années. Des projets de maintien ou de pérennité peuvent aussi être devancés ou reportés car le Transporteur profitera de projets de croissance afin d’optimiser la résolution d’une problématique dans une zone donnée ou sur un équipement en particulier.

À cette fin et tel que mentionné plus avant, le Transporteur a mis en place des équipes dédiées à l’optimisation du processus de planification du réseau afin de mieux gérer ses portefeuilles de projets.”

As evidenced by the table found in Appendix III, in the 6 rate cases mentioned in HQT-19, document 1, HQT’s only customer to participate regularly in such cases was BEMI; however, this company did not participate in the first rate case, R-3401-98.

Not only is this an *ex post* process that does not involve HQT customers – it is also not a very thorough process. In the first rate case, the Régie limited the scope of its analysis of HQT’s transmission planning to a forecast of the needs of HQT’s clientele and planned investments with respect to potential future impacts on tariffs. This is what the Régie said in decision D-2000-102:

[Our Translation] “After having analysed the intervenors’ comments, the Régie would like to clarify right away that the theme “Transmission Network Planning” should be limited to the

forecasts of the needs of the clientele and planned investments, with respect to potential future impacts on tariffs, and, as a consequence, the title of this topic will be 'Forecast of Needs and Planned Investments'."

[Original French version] "Après avoir analysé les commentaires des participants, la Régie tient à préciser d'emblée que le thème « Planification du réseau de transport » doit se limiter aux prévisions des besoins de la clientèle et investissements projetés en fonction des impacts tarifaires potentiels futurs, et en conséquence, le titre de ce thème sera « Prévision des besoins et d'investissements projetés »."²⁶

The "transmission planning" part of rate cases is therefore a very high-level review of a transmission planning exercise done internally at HQT. The Régie mentions that its goal, in this review, is to prevent sudden jumps in tariffs, and generally to ensure coherence from one rate case to another.

[Our Translation] "Finally, beyond the headings of the list proposed by Hydro-Québec, and taking into account the long delays between the approval of a transmission project and the implementation of this equipment, the Régie considers that it is necessary for it to develop a long term point of view on the development of Hydro-Québec's transmission network in order to foresee massive investments and prevent sudden jumps in tariffs. This perspective is also required of the Régie's own initiative to ensure coherence and continuity of the information presented during the present rate case and those that will be presented in the following rate cases."

[Original French version] "Enfin, au-delà des rubriques de la liste proposée par Hydro-Québec, et compte tenu des longs délais entre l'approbation de projets de transport et la mise en service de tels équipements, la Régie considère qu'il lui est nécessaire de développer une vision à long terme du développement du réseau de transport d'Hydro-Québec afin de voir venir les investissements massifs et de prévenir les chocs tarifaires. Cette perspective est également requise de par la volonté de la Régie d'assurer la cohérence et la continuité entre les informations présentées au cours de la présente cause tarifaire et celles qui seront présentées lors des causes qui lui succéderont."²⁷

In achieving this goal, the Régie does not take an in-depth look at HQT's transmission planning. There are no discussions on how HQT's network should look in the future. Instead, it is the presentation, by HQT, of a broad forecast on the costs of investments and their impacts on transmission tariffs. Although it may meet the *ex ante* requirement, it does not provide customers the opportunity to engage in meaningful discussions on overall transmission planning.

In a subsequent decision, D-2001-49, the Régie reiterated its objective of a broad, financial forecast and, as a consequence, limited the scope of the information disclosed by HQT on transmission planning in rate cases to what was necessary to meet this long-term objective.²⁸ Here, specifically, the necessity to file the "plan de gestion des actifs de TransÉnergie" was discussed. This is what HQT said on this topic, as quoted by the Régie:

²⁶ Decision D-2000-102 rendered in file R-3401-98 on June 2, 2000, page 34.

²⁷ *Ibid.*, page 35

²⁸ Decision D-2001-49 rendered on February 14, 2001 in file R-3401-98.

[Our Translation] "Rebuttal by Hydro-Québec

In its comments dated January 19, 2001, Hydro-Québec made it clear that it understood from past decisions in this file that the Régie intended to receive enough information to allow it to develop a long-term point of view on the development of the electricity transmission network, to foresee massive investments and to prevent sudden jumps in tariffs for consumers.

Hydro-Québec contends that the information it filed on December 21, 2001 are, in response to the Régie's initial information request 5.1, more than just a summary of the evolution of the transmission network for the years 1998-2008 and that it has also filed, in response to the Régie's initial request for information 5.2, the results of HQT's analysis of the impact of major investments on tariffs. HQT is of the opinion that this information constitutes the information sought by the Régie's decision D-2000-102.

Moreover, where the information that was filed allows the Régie to meet the objective sought and to execute its mandate according to standard practices in electricity regulation, Hydro-Québec is of the opinion that the filing of the *Plan de gestion des actifs de TransÉnergie* is not required, by reiterating that this is an internal working document which contains strategic and commercial data developed on the basis of scenarios, some of which have been modified since it was prepared."

[Original French version] "Réplique d'Hydro-Québec

Dans ses commentaires du 19 janvier 2001, Hydro-Québec précise qu'elle a compris des décisions antérieures dans la présente cause que la Régie désirait recevoir suffisamment d'informations pour lui permettre de développer une vision à long terme du développement du réseau de transport d'électricité, de voir venir les investissements massifs et de prévenir les chocs tarifaires aux consommateurs.

Hydro-Québec soutient que les informations qu'elle a déposées le 21 décembre 2001 constituent, en réponse à la demande de renseignements initiale 5.1 de la Régie, un exposé plus que sommaire sur l'évolution du réseau de transport pour les années 1998-2008 et qu'elle a aussi déposé, en réponse à la demande de renseignements initiale 5.2 de la Régie, les résultats de l'analyse de TransÉnergie de l'impact des investissements majeurs sur les tarifs. La demanderesse est d'avis que ces informations constituent l'information recherchée par la décision D-2000-102 de la Régie.

Aussi, dans la mesure où les informations qui ont été déposées permettent à la Régie de rencontrer l'objectif visé et d'exécuter son mandat selon les pratiques usuelles de la réglementation de l'électricité, Hydro-Québec est d'avis que le dépôt du Plan de gestion des actifs de TransÉnergie n'est pas requis, en rappelant qu'il s'agit d'un document de travail interne qui contient des données stratégiques et commerciales élaborées sur la base de scénarios dont certains ont été modifiés depuis sa préparation."²⁹

It is interesting to note that one of the arguments presented by HQT to challenge the request to file this document is that it contains information on "scenarios, some of which have been modified since their preparation". One would expect that in a "coordinated transmission planning process", these scenarios would be shared, to a certain extent, with the transmission customers, as they are being developed.

The Régie ruled in favour of HQT and decided that the "plan de gestion des actifs was not necessary":

²⁹

Ibid., page 16-17

[Our Translation] "Régie's Opinion"

To decide on the merits of Hydro-Québec's application to be released from the obligation imposed by decision D-2000-214 to file the *Plan de gestion des actifs de TransÉnergie*, the Régie examined the intervenors' and HQT's comments in light of its previous decisions rendered in this very file and the information newly filed as evidence by Hydro-Québec.

(...)

As a consequence, and taking into account Hydro-Québec's arguments and the risks related to forecasts on long-term needs as well as planning of investments on the main transmission network which are required for the addition of new generation capacity, the Régie deems it unnecessary that more detailed information be filed at the time being. As mentioned, the Régie has already underlined the fact that *'taking into account the scope of the present file, the Régie wishes to target as narrowly as possible the information required based on the priorities and the choices made. Thus, the Régie privileges information that it most likely to meet the objectives sought by decision D-2000-102.'*

[Original French version] "Opinion de la Régie"

Pour décider au mérite de la demande d'Hydro-Québec d'être relevée de l'obligation imposée par la décision D-2000-214 de déposer le Plan de gestion des actifs de TransÉnergie, la Régie a examiné les commentaires des intervenants et d'Hydro-Québec à la lumière de ses décisions antérieures rendues dans le présent dossier et des informations nouvellement déposées en preuve par Hydro-Québec.

(...)

Conséquemment et compte tenu des arguments d'Hydro-Québec et des aléas associés aux prévisions des besoins à long terme ainsi qu'à la planification des investissements sur le réseau principal qui seront requis pour l'ajout de nouvelles capacités de production, la Régie estime qu'il n'est pas nécessaire que de l'information plus détaillée soit déposée à ce moment-ci. Tel que mentionné précédemment, la Régie a déjà souligné que « compte tenu de l'ampleur de la présente cause, la Régie désire cibler le plus étroitement possible l'information qui est requise en fonction des priorités et des choix faits. Ainsi, la Régie privilégie les informations qui sont le plus susceptibles de satisfaire les objectifs visés par la décision D-2000-102. »³⁰

[Our underlining]

In the 2005 rate case, public-interest intervenor RNCREQ requested that HQT provide it with its internal documents (working papers) related to transmission planning. HQT responded that there were many such documents but that RNCREQ attorney was most likely referring to the "plan de gestion des actifs", which HQT representative François Hébert described as "un document principal de planification".³¹ When asked why this document had not been filed, HQT replied that this document was not essential to support its evidence in a rate case:

³⁰ Ibid., pages 18 and 20.

³¹ Transcript of the Régie hearing held in files R-3549-2004 / R-3557-2004 on January 31, 2005. Cross-examination of HQT panel 1 by Mtre Hélène Sicard, for intervenor RNCREQ. Page 106 to 119.

(Cross-examination by Me HÉLÈNE SICARD)

[Our Translation]"Q. [109] What were trying to get is the name of the document, which is the list to which you refer and the name of the documents, because it says at answer 13.1:

Yes, HQT has internal documents which draw up the entire group of planned projects, parameters and everything.

We understand that these are documents that evolve over time. But as the information is being entered by the different employees of Hydro-Québec, this is done in a specific document. So I understand that there are all sorts of elements in this list. I understand from the witnesses that this list evolves over time. But can the Régie please help me in obtaining the name of the document?

Me F. JEAN MOREL :

That's the investment files.

Me FRANÇOIS G. HÉBERT :

R. Listen, I think you refer to the *Plan de gestion des actifs* of which we was abundantly discussed in 2001, Maître Sicard. I think that this is what you are referring to, but it's one of the documents. It's the main planning document which, effectively, is updated by HQT from time to time.

Me HÉLÈNE SICARD :

Q. [110] Has this document been filed in the present case, updated as of the filing of your application?

R. The answer is no.

Q. [111] May I ask why?

R. Well, one of the reasons why we did not file this document is that we are in a rate case to set the rates for 2005. And, in our opinion, this document is not a document which necessarily has to be filed in support of our evidence.

Q. [112] I understand the description given by all the witnesses, however (*sic*), that this document contains the evolution of the planning of your projects and of your long-term needs. Am I mistaken?"

R. This is also my understanding of this document.

Mr. YVES FILION :

R. Could I just...

Q. [113] Could I ask that this document be filed as evidence?

R. I would perhaps like, Maître Sicard, to clarify one thing. It's that this document is a document that I would qualify as an internal working document which gives information, which helps us, internally, to supply the appropriate input to our official planning processes which are the preparation of the annual plan and the strategic plan.

So, the information that we are ready to make available at all times is the information related to the strategic plan and those related to the business plan. The internal documents that help feed

these processes, well those are not, these are not documents which are in the appropriate format to send to third parties, these are documents which have not necessarily been reviewed internally.

So, me, personally, when someone comes to see me with a list of projects for the next ten years, well, I haven't made up my mind on that list. So, the judgement that, as president of HQT, I would like to be able to use, and is used in our planning processes, that is the planning process for the business plan and the planning process for the strategic plan.

So, that's the reason why we did not want to deposit it... We don't want to file this document because it is not a document which has, which has been, and it is not part of our process, that it be reviewed at all levels, not only a review at my level, a review at the level of people who are below me and then at my level, before being in a format that we can file as a document, an official document from our division"

[Original French version] "Q. [109] Ce qu'on cherche à avoir, c'est le nom du document qui est la liste à laquelle il est fait référence et le nom des documents, parce qu'on parle à la réponse 13.1 :

Oui, le Transporteur dispose de documents de gestion interne qui établissent l'ensemble des projets planifiés, les paramètres et tout.

On comprend que ce sont des documents évolutifs. Mais à mesure que l'information est rentrée par les différents employés d'Hydro-Québec, ils le rentrent dans un document en particulier. Alors, je comprends qu'il y a toutes sortes d'éléments dans cette liste-là. Je comprends des témoins qu'elle évolue. Mais est-ce que la Régie pourrait m'assister pour obtenir le nom du document s'il vous plaît?

Me F. JEAN MOREL :
Ce sont les demandes d'investissements.

Me FRANÇOIS G. HÉBERT :

R. Écoutez, je pense que vous faites référence au plan de gestion des actifs dont on a abondamment parlé en deux mille un (2001), Maître Sicard. Je pense que c'est à ça que vous faites référence, mais il s'agit d'un des documents. C'est un document principal de planification qui, effectivement, est mis à jour par le Transporteur occasionnellement.

Me HÉLÈNE SICARD :

Q. [110] Est-ce que ce document a été produit dans le présent dossier mis à jour au moment du dépôt de votre demande?

R. La réponse est non.

Q. [111] Est-ce que je peux vous demander pourquoi?

R. Bien, une des raisons qui motive le fait que nous n'avons pas déposé ce document-là, c'est que nous sommes dans le cadre d'une cause tarifaire en vue d'établir les tarifs de deux mille cinq (2005). Et à notre avis, ce document-là n'est pas un document essentiel à déposer à l'appui de notre preuve.

Q. [112] Je viens de comprendre la description de tous les témoins, par contre que ce document-là contient l'évolution de votre planification de vos projets et de vos besoins à long terme. Est-ce que je me trompe.

R. C'est ma compréhension de l'objectif de ce document-là.

M. YVES FILION :

R. Je pourrais juste...

Q. [113] Est-ce que je pourrais demander la production de ce document, s'il vous plaît?

R. J'aimerais peut-être, Maître Sicard, vous préciser une chose. C'est que ce document-là est un document que je qualifierais d'un document de travail interne qui donne de l'information, qui nous aide à l'interne à fournir les intrants appropriés à nos processus de planification officielle que sont la préparation du plan annuel et la préparation du plan stratégique.

Alors, les informations que nous sommes prêts à rendre disponibles en tout temps sont les informations reliées au plan stratégique et les informations reliées au plan d'affaires. Les documents internes qui nous servent à alimenter ces processus-là, alors ils ne sont pas, ce ne sont pas des documents qui sont dans un format pour être transmis à l'externe, ce sont des documents qui n'ont pas nécessairement fait l'objet d'un arbitrage à l'interne.

Alors, moi personnellement, quand on vient me voir avec une liste de projets pour les dix prochaines années, bien, je n'ai pas encore porté un jugement sur cette liste-là. Alors, le jugement en tant que président d'Hydro-Québec TransÉnergie, j'aimerais bien l'exercer, et il s'exerce dans nos processus de planification, soit le processus de planification du plan d'affaires et le processus de planification du plan stratégique.

Donc, c'est la raison pour laquelle on ne voudrait pas le rendre... On ne veut pas déposer ce document-là parce qu'il n'est pas un document qui a été, qui a fait l'objet, et ce n'est pas prévu dans notre processus, qu'il fasse l'objet d'un arbitrage à tous les niveaux, pas seulement un arbitrage à mon niveau à moi, un arbitrage au niveau de mes relevants et ensuite à mon niveau avant d'être dans une forme qu'on peut déposer comme étant un document, un document officiel de notre unité.³²

RNCREQ's request to the Régie to have HQT file this document was rejected. In challenging this request, HQT relied on the Régie's aforementioned decision D-2001-49.

HQT may have been right in asserting that the filing of such working papers was not required in a rate case; however, having limited the information given to Régie intervenors, it cannot claim that it is performing "transmission planning" in accordance with FERC order 890. Therefore, Mr. Rose is incorrect in referring to this process as a "transmission planning process".

(d) *Bureau d'audiences publiques sur l'environnement*

The *Bureau d'audiences publiques sur l'environnement* (BAPE) is certainly not a forum for transmission planning as this term is understood in FERC order 890.

³² *Ibid.*, page 113 to 115

According to the *Environmental Quality Act*³³, the BAPE is an organization whose main function is to enquire into environmental questions which have been identified by the *Ministre du développement durable, de l'environnement et des parcs* of Québec:

"6.3. The function of the Bureau is to inquire into any question relating to the quality of the environment submitted to it by the Minister and to make to him a report of its findings and of its analysis thereof."

On the BAPE's website, we also find the following mission statement for this organization:

"Mission

The Bureau d'audiences publiques sur l'environnement is an independent agency that reports to the Minister of Sustainable Development, Environment and Parks. Its mission is to enlighten government decision-making in a sustainable development perspective, which encompasses the biophysical, social and economic aspects."³⁴

Since its creation, the BAPE has had the opportunity to examine transmission projects in three instances. HQT's transmission customers did not intervene in any of these, nor was HQT's general transmission plan discussed. As shown in the documentation relating to the three projects, the BAPE's main concern is how the project will affect local communities in a biophysical, social and economic perspective – there is no specific focus on the potential impacts on other stakeholders such as transmission customers.

These three projects are:

- Projet de construction d'une ligne monoterne à 315 kV Toulousteou-Micoua par Hydro-Québec TransÉnergie (26 January - 8 May 2009)
- Projet de construction d'une ligne à 315 kV, la ligne Chénier-Outaouais par Hydro-Québec Trans Énergie (26 May – 28 September 2008)
- Projet de construction du poste Anne-Hébert à 315-25 kV et de la ligne d'alimentation à 315 kV à Saint-Augustin-de-Desmaures par Hydro-Québec TransÉnergie (3 December 2002 – 17 January 2003)

In all three cases, local groups were consulted by HQT in order to discuss their, respective, biophysical, social and economic concerns. However, transmission customers did not participate in the consultation process, and transmission planning was not addressed by the BAPE. Hydro-Québec is the only transmission customer's whose interests were discussed.

³³ R.S.Q., ch. Q-2. See section 6.3

³⁴ http://www.bape.gouv.qc.ca/sections/bape/organisme/eng_organization_ind.htm

Here again, Mr. Rose is wrong in asserting that this is a transmission planning process.

(e) *Other*

Mr. Rose lists other instances in which transmission planning could occur: exploratory studies under section 12A.5 of HQT's OATT; HQT's and the Régie's complaint processes; and HQT's system impact study process. These are certainly not coordinated transmission planning process, but, instead, one-on-one processes involving HQT and its customers, with a specific objective – which is not general transmission planning.

Conclusion

HQT's current transmission planning process does not meet the "coordination" requirement of FERC 890. The fact that organizations such as the Régie and the BAPE examine certain specific issues related to HQT's transmission planning in self-contained files does not mean that HQT's transmission planning meets the requirements of FERC order 890. Moreover, on these platforms, HQT's customers (other than Hydro-Québec) do not intervene, and their specific interests are not discussed. These platforms examine issues of a more "public interest" nature.

As per FERC order 890, transmission planning options are not limited to *rigid and formal meeting procedures*. Attachment K allows a certain amount of leeway to the transmission provider to best design its transmission planning forum. Such a forum could take the form of technical meetings with interested parties (customers, neighbouring transmission providers, etc.) in which the Régie's formal rules of procedure and evidence would not apply, thus allowing stakeholders to discuss freely the planning of HQT's network.

Finally, in assessing HQT's position regarding the adequacy of existing procedures in meeting the objectives of FERC's Attachment K, it is useful to consider these procedures against the following standard:

"[the information sharing and consultation process] should enable customers, 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."³⁵

It is our contention that this standard is not met under the existing processes identified by HQT.

³⁵ FERC Order 890, paragraph 471

APPENDIX I – YEARLY APPROVAL OF INVESTMENTS OF LESS THAN 25MS

Régie de l'énergie – Investissements Files

Annual files for investments below \$25 million							
Name of the file	File number	Decision number	Decision date	Intervenors	Amount requested by HQT	Amount approved by the Régie	Name of the commissioner(s)
Budget d'investissement 2010	R-3707-2009	D-2010-056	May 14 2010	Association coopérative d'économie familiale de l'Outaouais (ACEF de l'Outaouais); Fédération canadienne de l'entreprise indépendante (FCEI); Groupe de recherche appliquée en macroécologie (GRAME); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA)	634.7	634.7	Gilles Boulianne; Marc Turgeon; Jean-François Viau
Budget d'investissement 2009	R-3670-2009	D-2009-013	March 2 2009	Association coopérative d'économie familiale de Québec (ACEF de Québec); Association de l'industrie électrique du Québec (AIEQ); Fédération canadienne de l'entreprise indépendante (FCEI); Groupe de recherche appliquée en macroécologie (GRAME); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); Union des municipalités du Québec (UMQ)	717.6	717.6	Richard Carrier; Lucie Gervais; Jean-François Viau

				Association coopérative d'économie familiale de Québec (ACEF de Québec); Association de l'industrie électrique du Québec (AIEQ); Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ); Energy Brookfield Marketing Inc. (EBMI); Fédération canadienne de l'entreprise indépendante (FCEI); Groupe de recherche appliquée en macroécologie (GRAMÉ); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); Union des consommateurs (UC); Union des municipalités du Québec (UMQ)			
Budget d'investissement 2008	R-3641- 2007	D-2008- 020	February 15 2008		716.9	716.9	Richard Carrier; Louise Rozon; Louise Pelletier

				Association coopérative d'économie familiale de Québec (ACEF de Québec); Association de l'industrie électrique du Québec (AIEQ); Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIÉ/CIFQ); Association québécoise de la production d'énergie renouvelable (AQPER); Energy Brookfield Marketing Inc. (EBMI); Fédération canadienne de l'entreprise indépendante (FCEI); Grand Conseil des Cris (Eeyou-Istchee)/Administration Régionale Crie (GCC(EI)/ARC); Groupe de recherche appliquée en macroécologie (GRAMÉ); Ontario Power Generation (OPG); Option consommateurs (OC); Powerex Corp. (Powerex); Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); Union des consommateurs (UC); Union des municipalités du Québec (UMQ)			
Budget d'investissement 2007	R-3606-2006	D-2006-170	December 21, 2006		512.2	512.2	Richard Carrier; François Tanguay; Gilles Boulianne
Budget d'investissement 2006	R-3592-2005	D-2006-89	May 26, 2006	Union des consommateurs (UC)	601.7	587.5	Benoît Pepin

Budget d'investissement 2005	R-3557-2004	D-2005-50	March 31, 2005	Association canadienne d'énergie éolienne (ACÉE); Brascan Énergie Marketing Inc. (BEMI); Fédération canadienne de l'entreprise indépendante (FCEI); Ontario Power Generation Inc. (OPG); Option consommateurs (OC); Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); Société en commandite Gaz Métro (Gaz Métro); Union des consommateurs (UC); Union des municipalités du Québec (UMQ)	590.7	550.4	Normand Bergeron; Benoît Pepin; François Tanguay
Budget d'investissement 2004	R-3520-2003	D-2004-87	April 29, 2004		431.6	396.8	Jean-Noël Vallière; Benoît Pepin; Michel Hardy
Budget d'investissement 2003	R-3504-2002	D-2003-71	April 9, 2003		258.8	258.8	Jean-Noël Vallière; Benoît Pepin; Francine Roy
Budget d'investissement 2002	R-3476-2001	D-2002-81	April 12, 2002	Action Réseau consommateur et Fédération des Associations Coopératives d'Économie Familiale (ARC/FACEF); Mouvement au Courant; Option consommateurs (OC)	204.7	204.7	Anita Côté-Verhaaf

Total

4668.9 4579.6

APPENDIX 2 – SPECIFIC INVESTMENT FILES OF 25MS AND MORE

Régie de l'énergie - Investissements

List of investment files for specific investments over \$25 million							
Name of the file	File number	Decision number	Decision date	Intervenors	Amount requested by HQT	Amount approved by the Régie	Name of the commissioner(s)
Projet de reconstruction de lignes et du remplacement d'un câble de garde entre les postes Cadillac et Rouyn	R-3721-2010	D-2010-061	May 20, 2010	Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ)	41.4	41.4	Lise Duquette
Projet de réfection de systèmes auxiliaires au poste Châteauguay	R-3719-2010	D-2010-048	April 28, 2010		45.5	45.5	Marc Turgeon
Projet de remplacement de la ligne entre les postes Notre-Dame et Berri + Projet de remplacement d'unités de mesure au poste Berri	R-3718-2009	D-2010-029	March 22, 2010		33.5	33.5	Michel Hardy

Projet visant le remplacement des liaisons hertziennes entre le poste Manicouagan, le poste Arnaud, le poste Montagnais et le complexe hydroélectrique Manic-5	R-3716-2009	D-2010-003	January 20, 20210		94.4	94.4	Jean-Paul Théorêt
Projet d'ajouts et modifications des équipements de transport requis pour l'utilisation des interconnexions HQT-MASS et HQT-NE	R-3715-2009	D-2010-084	June 30, 2010	Énergie Brookfield Marketing Inc. (EBMI); Newfoundland and Labrador Hydro (NLH); Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ)	120.2	120.2	Michel Hardy
Projet visant à remplacer les CLC au poste de la Nemiscau	R-3712-2009	D-2010-007	January 29, 2010	Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ)	71.8	71.8	Louise Rozon
Projet visant l'augmentation de capacité et le remplacement de plusieurs équipements du poste Chomedey à 315-120 kV	R-3705-2009	D-2009-140	October 23, 2009	Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ)	75.8	75.8	Richard Lassonde
Projet de mise à niveau du réseau de transport principal	R-3696-2009	D-2009-109	August 25, 2009	Newfoundland and Labrador Hydro (NLH); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); Union des municipalités du Québec (UMQ)	259.8	259.8	Michel Hardy

Projet de construction du nouveau poste Rivière-des-Prairies à 12-120 kV et de ses équipements connexes	R-3686-2009	D-2009-069	May 28, 2009	Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); Union des municipalités du Québec (UMQ)	37	37	Richard Lassonde
Projet de remise à neuf et de modernisation des compensateurs synchrones au poste Abitibi	R-3684-2009	D-2009-063	May 25, 2008	Union des municipalités du Québec (UMQ)	71.3	71.3	Richard Lassonde
Projet visant la construction du nouveau poste Waconichi à 161-25 kV et d'une nouvelle ligne d'alimentation à 161 kV	R-3683-2009	D-2009-075	June 10, 2009	Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA);	36.2	36.2	Louise Pelletier
Projet de raccordement des centrales de l'Eastmain-1-A et de la Sarcelle	R-3674-2008	D-2008-149	December 4, 2008		191.1	191.1	Lassonde
Projet relatif à la construction du nouveau poste Anne-Hébert à 315-25 kV et d'une nouvelle ligne à 315 kV	R-3666-2008	D-2008-129	October 3, 2008		83.7	83.7	Lassonde

Projet visant à raccorder de façon temporaire le camp d'exploration minière Éléonore au réseau de Transport	R-3656-2008	D-2008-073	May 21, 2008		51	51	Richard Carrier
Projet visant l'ajout d'un nouveau poste Mont-Tremblant à 120-25 kV et de deux nouvelles lignes d'alimentation à 120 kV	R-3651-2007	D-2008-043	March 28, 2008		51	51	Richard Carrier
Construction d'une nouvelle ligne de transport à 315 kV Chénier - Outaouais	R-3646-2007	D-2008-030	March 7, 2008	Association de l'industrie électrique du Québec (AIEQ); Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIÉ/CIFQ); Énergie La Lièvre s.e.c. (ÉLL); Groupe de recherche appliquée en macroécologie (GRAME); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA)	214.1	214.1	Gilles Bouliane
Projet de construction du nouveau poste de Vaudreuil-Soulanges à 120-25 kV et raccordement par le bouclage de la ligne actuelle Dorion-Rigaud	R-3635-2007	D-2007-118	October 17, 2007		29.7	29.7	Gilles Bouliane; Lucie Gervais; Marc Turgeon

Projet visant l'augmentation de la capacité du poste Saint-Maxime et la reconstruction de sa section 25 kV	R-3634-2007	D-2007-87	July 20, 2007		42	42	Richard Lassonde
Projet d'intégration des parcs éoliens au réseau régional de transport d'électricité Matapédia	R-3631-2007	D-2007-141; D-2008-077	D-2007-141 (December 18, 2007); D-2008-077 (May 28, 2008)	D-2007-141 (Association de l'industrie électrique du Québec (AIEQ); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); Union des municipalités du Québec (UMQ))	515.8	509.5	Richard Carrier (D-2007-141); Richard Lassonde; Lucie Gervais; Marc Turgeon (D-2008-077)
Projet de construction du nouveau poste de Saint-Lin à 125-25 kV ainsi qu'une nouvelle ligne à 120 kV de 25 km, entre le poste Paquin et le nouveau poste de Saint-Lin	R-3627-2007	D-2007-78	June 29, 2007		48.1	48.1	Richard Lassonde
Projet visant la réfection du poste Sorel	R-3619-2006	D-2007-36	April 3, 2007	Association québécoise de lutte contre la pollution atmosphérique et Stratégies énergétiques (AQLPA/S.É)	52.2	52.2	Richard Lassonde
Accroissement de la transformation, maintien des actifs et fiabilité de l'alimentation du poste Hauterive	R-3616-2006	D-2007-41	April 16, 2007		79	79	Richard Lassonde

Projet de raccordement du village de Wemindji au poste La Grande-1	R-3613-2006	D-2007-18	March 5, 2007		46	46	Benoît Pepin
Projet de raccordement des centrales de la Chute-Allard et des Rapides-des-Coeurs au réseau de transport d'électricité	R-3585-2005	D-2006-36	February 28, 2006	Groupe de recherche appliquée en macroécologie (GRAME)	104.5	104.5	Anthony Frayne
Projet de raccordement de la centrale de Péribonka	R-3581-2005	D-2006-25	February 1, 2006	Association de l'industrie électrique du Québec (AIEQ); Groupe de recherche appliquée en macroécologie (GRAME); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (SE-AQLPA)	184.5	184.5	Anthony Frayne
Projet d'ajout d'une nouvelle section 315-25 kV au poste Saraguay	R-3575-2005	D-2005-153	August 31, 2005		38.9	38.9	Jean-Paul Théorêt
Projet Arnaud	R-3561-2005	D-2005-119	June 29, 2005		32.2	32.2	Benoît Pepin

Projet de mise à niveau du réseau régional Matapédia dans le cadre de l'intégration des éoliennes	R-3560-2005	D-2005-142	August 2, 2005 (Decision); September 16, 2005 (reasons)	Association de l'industrie électrique du Québec (AIEQ); Fédération canadienne de l'entreprise indépendante (FCEI); Groupe de recherche appliquée en macroécologie (GRAMÉ); Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ); Regroupement des organismes environnementaux en énergie (ROÉE); Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (SÉ/AQLPA); Union des municipalités du Québec (UMQ)	34.6	34.6	Gilles Boulianne
Projet de remise à neuf et de modernisation des compensateurs synchrones au poste de Lévis	R-3553-2004	D-2005-45	March 10, 2005		33	33	Anita Côté-Verhaaf
Projet de raccordement de la centrale de l'Eastmain-1 au réseau de transport	R-3527-2004	D-2004-187	September 7, 2004		145.7	145.7	Francine Roy
Projet du déglaceur de Lévis	R-3522-2003	D-2004-175	August 20, 2004	Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É.-AQLPA); Union des consommateurs (UC)	190.8	190.8	Francine Roy
Projet de raccordement du village cri de Waskaganish au réseau de transport d'électricité	R-3512-2003	D-2003-214	November 17, 2003	Fédération canadienne de l'entreprise indépendante (FCEI); Grand conseil des Cris (EEYOU/ISTCHEE), Administration Régionale Crie et la Bande de Waskaganish (GCC/ARC/Bande de Waskaganish);	64	64	François Tanguay

				Option consommateurs (OC)			
Projet de raccordement de la centrale Toulouste	R-3497-2002	D-2003-68	April 4, 2003	Association de l'industrie électrique du Québec (AIEQ); Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); Stratégies énergétiques (S.É.); Union des consommateurs (UC)	129.1	129.1	Anita Côté-Verhaaf; Benoît Pepin; Francine Roy

Total

3247.9 3241.6

APPENDIX III – RATE CASES

File number	Intervenors
R-3401-98	- Association coopérative d'économie familiale de Québec (ACEF de Québec); - Association de l'industrie électrique du Québec (AIEQ); - Association des redistributeurs d'électricité du Québec (AREQ); - Association québécoise des consommateurs industriels d'électricité, Association des industries forestières du Québec Ltée et Association québécoise de la production d'énergie renouvelable (Coalition industrielle); - Gazoduc TransQuébec & Maritimes Inc. (Gazoduc TQM); - Groupe de recherche appliqué e en macroécologie et Union pour le développement durable (GRAMÉ-UDD); - Groupe STOP et Stratégies énergétiques (STOP/S.É.); - New Brunswick Power Corporation (Énergie NB); - New York Power Authority (NYPA); - Ontario Power Generation (OPG); - Option Consommateurs (OC); - PG&E National Energy Group Inc. (NEG); - Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); - Société en commandite Gaz Métropolitain (SCGM); - Union des consommateurs et Centre d'études réglementaires du Québec (UC-CERQ).
R-3549-2004 - Phase 1	- Association canadienne d'énergie éolienne (ACEE); - Brascan Énergie Marketing Inc. (BEMI); - Fédération canadienne de l'entreprise indépendante (FCEI); - Ontario Power Generation Inc. (OPG); - Option consommateurs (OC); - Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); - Société en commandite Gaz Métro (Gaz Métro); - Union des consommateurs (UC); - Union des municipalités du Québec (UMQ).
R-3549-2004 - Phase 2	- Association coopérative d'économie familiale de Québec (ACEF de Québec); - Association de l'industrie électrique du Québec (AIEQ); - Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIÉ/CIFQ); - Brascan Énergie Marketing Inc. (BEMI); - Fédération canadienne de l'entreprise indépendante (FCEI); - Option consommateurs (OC); - Ontario Power Generation (OPG); - Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ);

	- Union des consommateurs (UC); - Union des municipalités du Québec (UMQ).
R-3640-2007	- Association coopérative d'économie familiale de Québec (ACEF de Québec); - Association de l'industrie électrique du Québec (AIEQ); - Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ); - Energy Brookfield Marketing Inc. (EBMI); - Fédération canadienne de l'entreprise indépendante (FCEI); - Groupe interconnexions et énergie Québec (GIEQ); - Groupe de recherche appliquée en macroécologie (GRAME); - Option consommateurs (OC); - Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ); - Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); - Union des consommateurs (UC); - Union des municipalités du Québec (UMQ).
R-3605-2006	- Association coopérative d'économie familiale de Québec (ACEF de Québec); - Association de l'industrie électrique du Québec (AIEQ); - Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ); - Association québécoise de la production d'énergie renouvelable (AQPER); - Energy Brookfield Marketing Inc. (EBMI); - Fédération canadienne de l'entreprise indépendante (FCEI); - Grand Conseil des Cris (Eyou/Istchee)/Administration régionale Crie (GCC(EI)/ARC); - Groupe de recherche appliquée en macroécologie (GRAME); - Ontario Power Generation (OPG); - Option consommateurs (OC); - Powerex Corp. (Powerex); - Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); - Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); - Union des consommateurs (UC); - Union des municipalités du Québec (UMQ).
R-3669-2008 Phase I	- Association coopérative d'économie familiale de Québec (ACEF de Québec); - Association de l'industrie électrique du Québec (AIEQ); - Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ); - Énergie Brookfield Marketing Inc. (EBMI); - Fédération canadienne de l'entreprise indépendante (FCEI); - Groupe de recherche appliquée en macroécologie (GRAME);

	- Option consommateurs (OC); - Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); - Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); - Union des consommateurs (UC); - Union des municipalités du Québec (UMQ).
R-3706-2009	- Association coopérative d'économie familiale de l'Outaouais (ACEF de l'Outaouais); - Association coopérative d'économie familiale de Québec (ACEF de Québec); - Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ); - Énergie Brookfield Marketing Inc. (EBMI); - Fédération canadienne de l'entreprise indépendante (FCEI); - Groupe de recherche appliquée en macroécologie (GRAMÉ); - Option consommateurs (OC); - Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ); - Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA); - Union des consommateurs (UC); - Union des municipalités du Québec (UMQ).

RESPONSES TO
INFORMATION REQUESTS NUMBER 1
OF THE TRANSMISSION PROVIDER TO
NEWFOUNDLAND AND LABRADOR HYDRO
(« NLH »)

PART 1

Amended Evidence of the Intervener
Newfoundland and Labrador Hydro
September 23, 2010

Reference: NLH's Argumentation of September 23, 2010, page 6:

"Furthermore, in the part of the Order related to determining "Significant and Recurring" congestion, FERC insisted on the part played by stakeholders (including transmission customers) in network planning. FERC requested that transmission providers adopt an approach that ensures that economic studies required under this principle are focused on customer needs and concerns, not administratively determined metrics that may bear no necessary relation to those concerns."

Requests:

- 1.1 Veuillez définir ce que vous entendez par « Significant and Recurring congestion ».
[Translation] : Please define what you mean by "Significant and Recurring" congestion.

Response: The term "Significant and Recurring congestion" referenced by FERC in the context of the need for planning to involve both reliability and economical considerations, refers to congestion identified on the network by transmission customers. As FERC states:

"those portions of the transmission system where [transmission customers] have encountered transmission problems due to congestion or whether they believe upgrades and other investment may be necessary to reduce congestion and to integrate new resources. (See Order 890 ¶547). (our emphasis).

- 1.2 Êtes-vous d'accord que les « economic studies » auxquelles il est fait référence au paragraphe 542 de l'Ordonnance 890 de la FERC correspondent à un principe différent de celui de la « coordination »?
[Translation] Do you agree that the "economic studies" referred to in paragraph 542 of Order 890 of the FERC correspond to a different principle from that of "coordination"?

Response: Yes. In Order 890, FERC established nine Planning Principles (Order 890 at ¶444). All these planning principles are included under the Order 890 topic of "Coordinated, Open and Transparent Planning". The term "economic studies" referred to in the request is discussed under the planning principle of "Economic Planning Studies", which is distinct from the planning

principle “coordination”. However, these principles should not be considered in isolation. The Commission stated it believes that “coordinated studies can, for system planning purposes, be more beneficial than studies performed on a request by request basis”¹.

Reference: NLH’s Argumentation of September 23, 2010, page 11:

“The Régie’s investment authorization process is not a “planning process” fulfilling the coordination requirement of FERC order 890, but rather a “public interest and cost-oriented approval process”. This is confirmed by the fact that HQT’s customers generally do not participate in these files; instead, we mainly find public interest intervenors such as environmental groups and organizations defending the interests of electricity consumers.

In the annual investment files for projects under \$25 million, only two of HQT customers’ have intervened (BEMI and OPG). In a total of nine files, they intervened only three times. As for the investment files for specific projects above \$25million, a total of three HQT customers have intervened (NLH, ELL, and BEMI, the last two being affiliated entities), and they did so in only three out of 33 files.

[...] In Régie’s files, intervenors are required to limit their intervention to the approval of the projects in question; they are not meant to interact meaningfully with regards to transmission planning.”

Requests:

- 2.1 Veuillez définir ce que vous entendez par « public interest and cost-oriented approval process » et fournir toutes les sources au soutien de cette définition.
[Translation]: Please define what you mean by “public interest and cost-oriented approval process” and provide all sources to support this definition.

Response: We refer to the Régie’s Decision D-2009-140, paragraph 43. In the matter of an investment case, according to Régie’s case law, the Régie must only ensure that projects submitted for its approval meet public interest objectives and that project costs are reasonable. The investment approval process is different from a planning process, given its mandate which is to approve the outcome of a planning process relative to these objectives, which is distinct from a coordinated opening planning process which provides for the exchange of information on a prospective basis between the Transmission Provider and its customers.

- 2.2 Expliquez la différence que vous faites entre « an environmental group or an organization defending the interests of electricity consumers » et les « HQT’s customers » et leur intérêt à participer au processus d’autorisation d’investissements.
[Translation]: Explain how you distinguish between “an environmental group or an organization defending the interests of electricity consumers” and “HQT’s customers” and their interest in participating in the investment approval process.

¹ FERC Order 890, paragraph 543.

Response: Each of the categories of groups has different interests. Environmental groups may intervene in investment files to ensure that projects submitted to the Régie respect the principles of sustainable development. Organizations defending the interests of electricity consumers may be involved so that the rate impacts of the investments are taken into account by the Transmission Provider. Finally, HQT customers can intervene to ensure the equitable and transparent application of Hydro Québec's Open Access Transmission Tariff.

- 2.3 Expliquez pourquoi NLH n'a participé qu'à trois des 33 dossiers d'autorisation des investissements devant la Régie pour des projets de plus de 25 \$ millions.
[Translation] Explain why NLH has participated in only three of 33 cases of investment proposals before the Régie for approval of projects over \$ 25 million.

Response: We participated in cases that we felt were relevant to us, in the context of our commercial interests.

- 2.4 Expliquez ce que vous entendez par l'expression « interact meaningfully ».
[Translation]: Explain what you mean by "interact meaningfully."

Response: Interact meaningfully with regards to transmission planning, means engagement in the development of a transmission study plan, the study base case and assumptions and the review of the study results. This engagement involves providing information and being provided with information in order to be able to provide relevant input, and to understand and have confidence in the results of the study process, such that the entire process is open and transparent and devoid of any potential for discriminatory treatment.

Reference: NLH's Argumentation of September 23, 2010, page 18:

"As evidenced by the table found in Appendix III, in the 6 rate cases mentioned in HQT-19, document 1, HQT's only customer to participate regularly in such cases was BEMI; however, this company did not participate in the first rate case, R-3401-98."

Request:

- 3.1 Expliquez pourquoi NLH n'est intervenue dans aucun des dossiers tarifaires.
[Translation]: Explain why NLH did not intervene in a single tariff case.

Response: Prior to 2006, NLH was not a customer of HQT. Subsequently, in 2007, NLH did participate in Régie's Rate case R-3640-2007, as a member of the Quebec Interconnection and Energy Group ("QIEG").

Reference: NLH's Argumentation of September 23, 2010, page 25:

"Since its creation, the BAPE has had the opportunity to examine transmission projects in three instances. HQT's transmission customers did not intervene in any of these, nor was HQT's general transmission plan discussed. [...]"

In all three cases, local groups were consulted by HQT in order to discuss their, respective, biophysical, social and economic concerns. However, transmission customers did not participate in the consultation process, and transmission planning was not addressed by the BAPE. Hydro-Québec is the only transmission customer's whose interests were discussed. As shown in the documentation relating to the three projects, the BAPE's main concern is how the project will affect local communities in a biophysical, social and economic perspective - there is no specific focus on the potential impacts on other stakeholders such as transmission customers."

Requests:

- 4.1 Expliquez pourquoi NLH n'est pas intervenue dans les trois processus du BAPE auxquels elle réfère.
[Translation]: Explain why NLH did not intervene in the three stages of the BAPE process to which it refers.

Response: As a transmission customer the BAPE hearings were not relevant to us, as a forum to address our transmission planning interests.

- 4.2 Expliquez sur quoi NLH se fonde pour soutenir que « there is no specific focus on the potential impacts on other stakeholders such as transmission customers »?
[Translation]: Explain the basis for NLH's claim that "there is no specific focus on the potential impacts on other stakeholders such as transmission customers"?

Response: The BAPE is an agency dedicated to public information and consultation on projects likely to have impacts on the environment or any other question related to the quality of the environment. The scope of these hearings is focused on socioeconomic and environmental impacts.

Reference: NLH's Argumentation of September 23, 2010, page 26:

"(e) Other:

Mr. Rose lists other instances in which transmission planning could occur: exploratory studies under section 12A.5 of HQT's OATT; HQT's and the Régie's complaint processes; and HQT's system impact study process. These are certainly not coordinated transmission planning process, but, instead, one-on-one processes involving HQT and its customers, with a specific objective – which is not general transmission planning."

Requests:

- 5.1 Est-ce que NLH est membre du NPCC?
[Translation]: Is NLH a member of NPCC?

Response: Yes.

- 5.2 Si oui, à quel titre?
[Translation]: If so, in which capacity?

Response: General member (sector 5 – marketers, brokers and aggregators).

- 5.3 Depuis quand?
[Translation]: Since when?

Response: 2009

- 5.4 Pourquoi NLH ne réfère pas à ce processus dans la liste précitée?
[Translation]: Why does NLH not refer to this process in the list referred to above?

Response: NLH recognizes that the NPCC process involves coordinated planning. However, this coordinated planning is focused on reliability issues, not economic issues. Order 890 explicitly recognizes the need to go beyond reliability objectives in coordinating of transmission planning:

“At the outset, we wish to clarify that our primary objective in adopting this principle is to ensure that the transmission planning process encompasses more than reliability considerations. Although planning to maintain reliability is a critical priority, it is not the only one. Planning involves both reliability and economic considerations. Order 890 ¶542)”

Accordingly, Order 890 intends to introduce coordinated planning that focuses on economic issues. This does not displace NPCC function, but complements it by expanding the coordination activities beyond the reliability concerns that have been the traditional focus on NPCC. Indeed, there would be no need for FERC to promulgate the Order 890 Coordinated Planning requirements if FERC viewed NPCC (or any other NERC entity) as adequately addressing the economic concerns associated with transmission planning.

- 5.5 Est-ce que NLH a déjà fait des demandes d'études exploratoires en vertu de l'article 12A.5 des Tarifs et conditions?
[Translation]: Has NLH ever made requests for exploratory feasibility studies under section 12A.5 of the OATT?

Response: Section 12A of the HQT OATT refers to Connection of Generating Stations. This section of the OATT would only apply to NLH if it was to build a generating plant in Québec. Connection Agreement do not constitute a reservation for transmission service.

PART 2

Amended Direct Testimony of Dr. Robert Sinclair
September 23, 2010

Reference: Amended direct testimony of Dr. Sinclair, page 41:

“Appendix K sets out the regional planning requirements of Order 890”.

Requests:

- 1.1 Est-ce que vos services ont déjà été retenus relativement à l’Ordonnance 890 de la FERC?

[Translation]: Have your services ever been enlisted in respect of Order 890 of the FERC?

Response: Yes. My assignments generally involve issues closely connected to transmission policies. Because FERC Order 890 establishes the policies for transmission access, I am enlisted on a continual basis with respect to Order 890. Moreover, the fundamental mission of Potomac Economics is the monitoring of transmission markets. This includes monitoring the administration and compliance with FERC open access tariffs, including Order 890 tariffs. We also monitor multi-lateral RTO markets (e.g., ISO-NE), which also involve open access tariff issues.

In monitoring transmission tariffs, we are explicitly required by FERC Order to monitor, among other things:

- (1) The availability of transmission capacity (including the calculation of ATC values);
- (2) Requests for transmission service and the proper handling of these requests;
- (3) Transmission planning process; and
- (4) Congestion management;

- 1.2 Si oui, fournir la liste de ces mandats et leur objet.

[Translation]: If so, please provide a list of these mandates and their purpose.

Response:

1. *Southwest Power Pool (SPP) Future Markets*: SPP requested review and comment on the Draft Market Protocols for the LMP-based markets that are to be proposed in the SPP. Work Product: Draft Report expected November 2010 (not available due to confidential nature of work product).

2. *Independent Monitor for the Summer 2009 Entergy Request for Proposal for long-term resources*: Louisiana Public Service Commission required Independent Monitoring of the evaluation of production cost savings, transmission access, and other facets of the Entergy RFP selection process. Work Product: Draft Report expected December 2010.

3. *SPP/Entergy*: SPP requested examination of market power issues associated with Entergy joining SPP. Work Product: Expert Report of Dr. David Patton (attached, Confidential Material Redacted)

4. *Arizona Public Service*: Provide a FERC-required independent monitoring of Arizona Public Service Company's transmission network and policies. Work Product: Quarterly Reports (available on FERC website, Docket Docket No. EC05-20-000).

5. *Public Service of New Mexico*: Provide a FERC-required independent monitoring of Public Service Company of New Mexico's transmission network and policies. Work Product: Quarterly Reports (available on FERC website, Docket Docket No. EC05-29-000).

6. *Duke Power*: Provide a FERC-required independent monitoring of Duke Power Company's transmission network and policies. Work Product: Quarterly Reports (available on FERC website, Docket Docket No. EC05-1236-000).

7. *PacifiCorp*: Provide a FERC-required independent monitoring of PacifiCorp's transmission network and policies. Work Product: Quarterly Reports (available on FERC website, Docket Docket No. EC05-110-000).

1.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie.

[Translation]: If reports or written statements were provided or filed, please supply a copy.

Response: Please see response to 1.2, above.

2.1 Est-ce que vos services ont déjà été retenus relativement au processus de planification des installations de transport prévu à l'Appendice K du pro forma OATT de la FERC?

[Translation]: Have your services ever been enlisted in the planning of the transmission facilities represented in Appendix K of the OATT's FERC pro forma?

Response: Yes. I have been enlisted in projects that include planning processes for entities that have adopted FERC's Appendix K. This included assignment where we were specifically required by FERC to monitor transmission planning processes. See Response to 1.1, above.

2.2 Si oui, fournir la liste de ces mandats et leur objet.

[Translation]: If so, provide a list of these mandates and their purpose.

Response:

1. *Independent Monitor for the Summer 2009 Entergy Request for Proposal for long-term resources:* Louisiana Public Service Commission required Independent Monitoring of the evaluation of production cost savings, transmission access, and other facets of the Entergy RFP selection process. Work Product: Draft Report expected December 2010.

2. *SPP/Entergy:* SPP requested examination of market power issues associated with Entergy joining SPP. Work Product: Expert Report of Dr. David Patton (attached, Confidential Material Redacted).

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4. *Public Service of New Mexico:* Provide a FERC-required independent monitoring of Public Service Company of New Mexico's transmission network and policies. Work Product: Quarterly Reports (available on FERC website, Docket Docket No. EC05-29-000).

2.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie.

[Translation]: If reports or written statements were provided or filed, please supply a copy.

Response: Please see response to 2.2, above.