

QUÉBEC

RÉGIE DE L'ÉNERGIE

**R-3669-2008
Phase 2**

**HYDRO-QUÉBEC
Demanderesse**

et

Intervenants

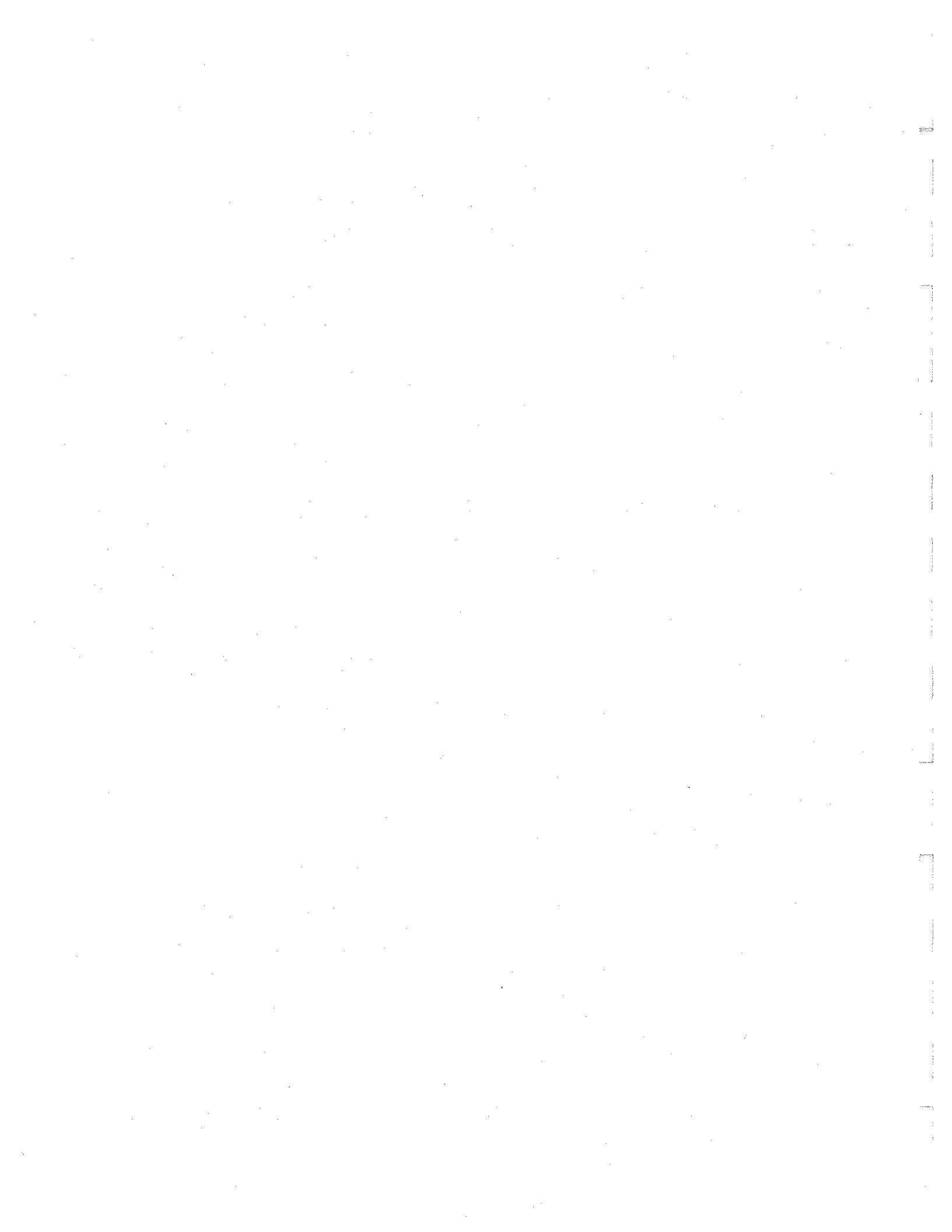
**COMPENDIUM DE LA PREUVE ET DES AUTORITÉS
THÈME 3
PROCESSUS DE PLANIFICATION
DES INSTALLATIONS DE TRANSPORT
(VOLUME 2 DE 2)**

LISTE DES DOCUMENTS PERTINENTS

DESCRIPTION	Onglet
Extraits des ordonnances 890 de la FERC	
Ordonnance 890, p. 1-6, 17-22, 33-44, 57-64, 86-96, 107-126, 234-323, 330-333, 712-733, 748-752	1
Ordonnance 890-A, p. 78, 105, 108-110, 334, 362-364	2
Ordonnance 890-B, tarif <i>pro forma</i> , article 6, Appendice K	3
Preuve du Transporteur	
Article 12 TC actuels	4
Article 2.2 TC	5
Pièce HQT-1, doc. 1, (B-129), Mise à jour de la proposition de modifications aux <i>Tarifs et conditions des services de transport d'Hydro-Québec</i> à la suite de l'Ordonnance 890 de la FERC, p. 13-16	6
Pièce HQT-8, doc. 3 (B-86), Réponses du Transporteur à la DDR numéro 1 d'EBM, p. 3-11	7
Pièce HQT-8, doc. 6.1 (B-132), Response to Questions 6.5 and 6.6 of the Request for Information by RMCREQ/UC	8
Pièce HQT-12, doc. 1 (B-110), Contre-expertise Judah Rose	9
Pièce HQT-15, doc. 1 (B-129), Mesures de gestion (TLR) sur le réseau de TransÉnergie pour la période du 1 ^{er} juin 2009 au 31 mai 2010	10
Pièce HQT-16, doc. 1 (B-129), Investissements en transport	11
Pièce HQT-17, doc. 1 (B-129), Plan stratégique d'Hydro-Québec, 2009-2013	12
Pièce HQT-18, doc. 1 (B-129), Processus d'approbation des projets d'investissement par la Régie de l'énergie	13
Pièce HQT-19, doc. 1 (B-129), Planification du réseau et dossiers tarifaires	14
Pièce HQT-20, doc. 1 (B-129), Planification du réseau de transport (pièce HQT-9, doc. 1, dans le dossier R-3706-2009)	15
Pièce HQT-21, doc. 1 (B-129), Guide de dépôt pour Hydro-Québec dans ses activités de transport d'électricité	16
Pièce HQT-22, doc. 1 (B-129), Processus d'évaluation de l'impact environnemental	17

DESCRIPTION	Onglet
Pièce HQT-23, doc. 1 (B-129), Procédure d'examen des plaintes des clients d'Hydro-Québec TransÉnergie	18
Pièce HQT-24, doc. 1 (B-129), Hydro-Québec TransÉnergie, rencontres avec les réseaux voisins	19
Pièce HQT-25, doc. 1 (B-129), Code de conduite du Transporteur	20
Pièce HQT-26, doc. 1 (B-129), Procedures for System Modeling : Data Requirements & Facility Ratings, NPCC	21
Pièce HQT-27, doc. 1 (B-129), HQT Point	22
Pièce HQT-29, doc. 3 (B-151), Réponse du Transporteur à la DDR d'EBM, p. 3-24	23
Pièce HQT-29, doc. 6 (B-138), Réponses du Transporteur à la DDR numéro 3 de RNCREQ/UC, p. 46-60	24
Pièce HQT-36, doc. 1 (B-162), Présentation du Transporteur, Thème 3 : Processus de planification ouvert – Sommaire des éléments principaux	25
Pièce HQT-37, doc. 1 (B-163), Présentation de Judah Rose : HQT Open Transmission Planning Process	26
Pièce B-202, <i>Code of Federal Regulations</i> , article 35.37	27
Pièce B-231, NERC Compliance Matrix	28
Pièce B-232, ERCOT 2008 Annual Report	29
Pièce B-233, Article 211A <i>Federal Power Act</i> (codifié sous l'article 824j, U.S. Code, Title 16, Chapter 12, subchapter II)	30
Pièce B-235, 2009 BPA Facts	31
Pièce B-236, ISO/RTO Operating Regions	32
Pièce B-237, NOPR: <i>Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities</i> , Docket No RM-10-23-000, 17 juin 2010	33
Preuve des Intervenants	
Pièce C-2-51, BC Hydro - Application for Amendments to the OATT	34
Pièce C-3-58, Rapport Raphals, 23 septembre 2010, p. 3, 14, 18-19, 42-72, 92	35
Pièce C-3-62, Réponse à la DDR du Transporteur à l'expert de RNCREQ/UC	36
Pièce C-6-29; Preuve d'EBM, 10 juin 2009, p. 3-10	37

DESCRIPTION	Onglet
Pièce C-6-52, Rapport Marshall, 28 septembre 2010	38
Pièce C-6-56, Rapport Roach, 28 septembre 2010, p. 37-59	39
Pièce C-6-61, Réponse d'EBM à la DDR du Transporteur	40
Pièce C-6-91, FERC Fact Sheet, Order 890	41
Pièce C-6-106, Présentation de William Marshall : Attachment K and Section 15.4	42
Pièce C-6-104, Présentation d'EBM : Processus de planification	43
Pièce C-6-108, <i>Integrys Energy Services, Inc. v. New Brunswick Power Generation Corporation</i> , 134 FERC 61,423, Docket # EI09-32-001/EL09-32-002, 29 mars 2011	44
Pièce C-6-109, Réponses d'EBM aux engagements 1 à 9	45
Pièce C-6-112, Extraits de Ordonnance 697, <i>Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities</i> , 119 FERC 61,295 – 18 CFR Part 35, Docket No. RM04-7-000, 21 juin 2007	46
Pièce C-13-24, Rapport Sinclair, 23 septembre 2010, p. 12-23, 34-36, 40-42 et Preuve de NLH, 23 septembre 2010	47
Pièce C-13-28, Réponses de NLH à la DDR du Transporteur	48
Extraits des notes sténographiques	
Extraits du témoignage du panel de témoins du Transporteur, N.S., vol. 3, 20 octobre 2010, p. 1-5, 70-145, 154-228	49
Extraits du témoignage du panel de témoins du Transporteur, N.S., vol. 4, 21 octobre 2010, p. 1-21, 30-53, 70-81, 90-173	50
Extraits du témoignage du panel de témoins du Transporteur, N.S., vol. 5, 22 octobre 2010, p. 1-37, 46-77, 98-153	51
Extraits du témoignage du panel de témoins de SÉ-AQLPA et du témoignage de Philip Raphals, N.S., vol. 14, 15 février 2011, p. 1-5, 146-157, 218-245	52
Extraits du témoignage de Philip Raphals, N.S., vol. 15, 16 février 2011, p. 1-5, 18-45	53
Extraits du témoignage de Philip Raphals, N.S., vol. 17, 18 février 2011, p. 1-5, 14-109, 134-169, 198-209	54
Extraits du témoignage du panel de témoins d'EBM, N.S., vol. 20, 19 avril 2011, p. 1-5, 70-85, 102-157	55
Extraits du témoignage du panel de témoins d'EBM, N.S., vol. 21, 20 avril 2011,	56



DESCRIPTION	Onglet
p. 1-17, 258-293	
Extraits du témoignage du panel de témoins d'EBM, N.S., vol. 22, 21 avril 2011, p. 1-5, 10-81	57
Extraits du témoignage du panel de témoins de NLH, N.S., vol. 23, 2 mai 2011, p. 1-5, 70-81	58
Extraits du témoignage du panel de témoins de NLH, N.S., vol. 25, 4 mai 2011, p. 1-5, 86-129, 186-240	59
Extraits du témoignage du panel de témoins de NLH, N.S., vol. 26, 5 mai 2011, p. 1-49	60
Extraits du témoignage du panel de témoins d'EBM, N.S., vol. 27, 9 mai 2011, p. 1-5, 118-213	61
Extraits du témoignage du panel de témoins d'EBM, N.S., vol. 28, 10 mai 2011, p. 1-21, 182-208	62
Extraits du témoignage du panel de témoins d'EBM, N.S., vol. 29, 11 mai 2011, p. 1-37, 178-189, 214-225	63
Autorités et législation	
Ordonnance 888-A, Partie II, <i>Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities</i> , 18 C.F.R. Part 35, 4 mars 1997, Docket #RM95-8-001/RM94-7-002, p. 27-33	64
Articles 205, 211 et 217 du <i>Federal Power Act</i> , codifiés sous la référence aux articles 824d, 824j-1 et 824q, U.S. Code, Title 16, Chapter 12, Subchapter II	65
<i>TransAlta Enterprises Corporation</i> , 75 F.E.R.C. P61, 268, 12 juin 1996	66
<i>Consumers Energy Company v. FERC</i> , 367 F.3d 915 (C.A., Dist. of Columbia, 2004)	67
<i>Décision concernant les questions à débattre, les documents et informations à produire avec la demande amendée, l'échéancier et les frais de la phase informationnelle</i> , Décision D-2000-102, 2 juin 2000, p. 27-38	68
<i>Décision concernant la demande révisée relative à la modification des tarifs de transport d'électricité</i> , Décision D-2002-095, 30 avril 2002, p.15-19, 68-75, 339-343	69
<i>Newfoundland and Labrador Hydro c. Hydro-Québec</i> , Décision D-2010-053, 11 mai 2010, p. 51-62	70
<i>Newfoundland and Labrador Hydro c. Hydro-Québec</i> , Décision D-2011-040, 6 avril 2011	71



DESCRIPTION	Onglet
<i>Loi sur Hydro-Québec, L.R.Q., c. H-5</i>	72
<i>Loi sur la Régie de l'énergie, L.R.Q., c. R-6.01</i>	73
Décret 1277-2001, 2001 G.O. II., p. 7705-7725	74
<i>Règlement sur la procédure de la Régie de l'énergie, c. R-6.01, r. 4</i>	75
<i>Règlement sur les conditions et les cas requérant une autorisation de la Régie de l'énergie, c. R-6.01, r.2</i>	76
<i>Règles de procédure relatives au déroulement des audiences publiques, L.R.Q. c. Q-2, r.19</i>	77

Montréal, ce 27 juin 2011

Norton Rose OR, S.E.N.C.R.L., S.R.L.

NORTON ROSE OR, S.E.N.C.R.L., S.R.L.

Procureurs d'Hydro-Québec, dans ses activités de transport d'électricité

Me Éric Dunberry

Me Marie-Christine Hivon

Me Catherine Martel

Bureau 2500

1, Place Ville-Marie

Montréal (Québec) H3B 1R1

Tél. : (514) 847-4492 (E.D.)

Tél. : (514) 847-4805 (M-C.H.)

Tél. : (514) 847-4987 (C.M.)

Télé. : (514) 286-5474

eric.dunberry@nortonrose.com

marie-christine.hivon@nortonrose.com

catherine.martel@nortonrose.com

HYDRO-QUÉBEC, dans ses activités de transport d'électricité

Me F. Jean Morel

75, boulevard René-Lévesque Ouest
4^e étage

Montréal (Québec) H2Z 1A4

Tél. : (514) 289-2068

Télé. : (514) 289-3719

morel.jean@hydro.qc.ca



RÉGIE DE L'ÉNERGIE

DOSSIER R-3669-08 PHASE 2

RÉPONSES AUX DEMANDES DE RENSEIGNEMENTS #1 D'HQT À L'EXPERT DU RNCREQ ET DE UC

13 OCTOBRE 2010

Demande 1 :

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

Réponse 1.1 : Oui.

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

Réponse 1.2 : Dans le dossier R-3640-07, le RNCREQ et UC m'ont mandaté, entre autres, d'analyser les implications pour la réglementation du Transporteur de l'Ordonnance 890.

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

Réponse 1.3 : Voir Section 5, « FERC Order 890 and Its Implications for Transmission Regulation in Quebec », in Raphals, P., *Commentaires sur la demande tarifaire 2008 de TransÉnergie*, Rapport d'expertise, R-3640-07, 15 octobre 2007, p. 15-31¹.

Demande 2 :

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?

¹ http://www.regie-energie.qc.ca/audiences/3640-07/Preuve3640/C-12-7-UC-RNCREQ_Memoire-UC-RNCREQ_3640_15oct07.pdf.

Réponse 2.1 : Non.

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

Réponse 2.2 : N/A

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

Réponse 2.3 : N/A

Citation :

« Bien avant l'Ord. 890, les Tarifs et conditions de TransÉnergie divergeaient déjà du pro forma sur plusieurs points. » (p. 6)

Demande 3 :

3.1 Veuillez préciser quels sont les points auxquels vous faites référence.

Réponse 3.1 :

Il y en a plusieurs, de différents degrés d'importance.

L'existence même de la section IV des TC peut être vue comme une divergence, étant donné que la FERC ne réglemente pas la desserte de la charge locale par les services publics sous sa compétence. Cela dit, l'existence de cette section ne contredit aucunement l'esprit ni la lettre de l'Ord. 888.

Une des plus importantes divergences découle de la décision D-2002-95 de la Régie, où elle demande d'intégrer dans la base de tarification du Transporteur l'ensemble des coûts des ajouts au réseau jugés prudemment acquis et utiles (jusqu'à la concurrence d'un certain montant), y compris des coûts de raccordements qui sont utilisés par un seul client du Transporteur et donc ne constituent pas, selon les politiques de la FERC, d'améliorations du réseau au bénéfice de tous les usagers. La décision de supprimer le concept de Direct Assignment Facilities (Installations d'attribution particulière) des Tarifs et conditions découle de celle-ci.

La Régie a souligné que² :

² D-2002-95, p. 298.

Cette position est équitable en regard des producteurs futurs. En effet, le tarif de transport inclut le coût des installations existantes qui permettent de raccorder et d'intégrer les centrales au réseau. Si les nouveaux producteurs devaient payer le coût de leurs installations, ils se trouveraient en position de payer deux fois les frais de raccordement et d'intégration : ils paieraient directement pour leurs propres besoins et ils paieraient indirectement le coût des installations des autres producteurs par le biais du tarif de transport.

Cette décision respecte explicitement un aspect fondamental de la politique de tarification de transport de la FERC, soit le traitement équitable des producteurs existants et futurs. Toutefois, elle rentre en conflit avec un autre principe fondamental de cette même politique : que les coûts des raccordements qui ne bénéficient qu'à un seul utilisateur du réseau ne devraient pas être supportés par l'ensemble des usagers par le biais des tarifs de transport³.

Ainsi, en éliminant le concept des Installations d'attribution particulière (*Direct Assignment Facilities*), qui permet d'exclure ces coûts des tarifs de transport, la Régie a choisi de diverger d'un élément fondamental de la politique de transport de la FERC, qui représente la toile de fond des Ordonnances 888 et 890.

Pour mentionner quelques autres exemples :

- L'utilisation du point HQT comme point de réception, tant par HQP que par d'autres producteurs, telle que l'autorise la décision D-2002-95 est une approche qui s'éloigne du concept du service du point à point tel que défini par le OATT *pro forma* de la FERC. Tel que mentionné aux pages 322-323 de cette même décision, cette approche s'apparente plus à celle des « pools ». Sans étude approfondie des OATT acceptés par la FERC dans le cas des différents pools, il est impossible de statuer sur l'acceptabilité de cet arrangement pour celle-ci.
- L'utilisation du point HQT comme point (node) unique du réseau de transport s'éloigne aussi de la notion même de l'ouverture d'un réseau de transport. Je ne connais aucun autre transporteur sous la compétence de la FERC qui ne présente aucun de ses chemins internes sur son OASIS. Sans étude approfondie, il est, encore une fois, impossible de statuer sur l'acceptabilité de cet arrangement pour la FERC.
- La méthodologie de calcul de la part du ratio de charge, afin de calculer les tarifs du Distributeur et des clients en réseau intégré (le cas échéant), fixée encore une fois dans D-2002-95, diverge clairement de celle du *pro forma*.

³ Dans son Ordonnance 409 de 1996, la FERC indiquait déjà que ce principe, selon lequel les coûts des raccordements sont payables directement par le client du service de transport tandis que les ajouts qui augmentent la capacité du réseau principal rentrent dans la base de tarification, faisait partie de « well established Commission policy developed under the Federal Power Act ». Order 409, 18 décembre 1996, p. 7-8.

3.2 Qu'entendez-vous par « divergeaient »?

Réponse 3.2 :

J'utilise le terme « diverger » pour faire référence à toute disposition des *Tarifs and conditions* du Transporteur qui diffère de façon substantielle de l'OATT *pro forma* de la FERC. Il importe de souligner que les transporteurs soumis à la compétence de la FERC (les « jurisdictional utilities ») sont libres de diverger du *pro forma*, qui représente en fait une norme minimale. Chaque divergence doit être justifiée, et la FERC en dispose au cas par cas, en fonction des principes qui sous-tendent les Ordonnances.

Citation :

« Il insiste, avec raison, sur le fait que les audiences de la Régie en vertu de l'art. 73 permettent la participation à du public⁷¹. Toutefois, la Régie s'est exprimée à plusieurs reprises à l'effet qu'une telle audience n'est pas le forum approprié pour faire l'étude de la planification du Transporteur. (p. 53)

Demande 4 :

4.1 Veuillez fournir les références et une copie des décisions de la Régie auxquelles vous faites référence.

Réponse 4.1 :

Je faisais notamment référence à la décision D-2009-140, où la Régie clarifie son rôle en matière d'autorisation de projets sous l'article 73 LRÉ. Dans cette décision, la Régie explique qu'elle doit s'assurer que les projets soumis rencontrent des objectifs d'intérêt public et que les coûts du projet sont raisonnables. Toutefois, elle indique clairement que ce n'est pas le forum approprié pour débattre l'ensemble des options disponibles au Transporteur⁴.

[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 nouvelle⁷.

[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.

⁴ D-2009-140, R-3705-2009, p. 10.

[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.

Par ailleurs, dans sa décision D-2009-068, la Régie a limité les débats dans l'audience R-3696-2009, concernant la mise à niveau du réseau principal, comme suit :

« À cet effet, la Régie demande à l'intervenant de ne pas élaborer sur les projets futurs puisque ces projets requis sur le réseau « bulk » puisque ces projets sont, d'une part, hypothétiques et, d'autre part, ne font pas l'objet de la présente demande⁵ ».

Dans le même dossier, la Régie a limité l'intervention de l'UMQ à⁶ :

« [...] vérifier et valider les prévisions de la demande démontrant les prétentions du Transporteur quant à l'accroissement de la charge au sud du réseau accompagnée d'une baisse équivalente au nord du réseau, de même que les fluctuations à la baisse et à la hausse de cette demande [...] »

« [...] réviser et valider l'analyse des coûts détaillés des travaux associés au projet [...] »

« [...] vérifier et valider le caractère « optimal » de la solution retenue et présentée par le Transporteur [...] ».

Toutefois, elle a interdit de

« [...] vérifier et valider les autres options qui ont été envisagées ou qui devraient être envisagées pour rencontrer les besoins de la demande, incluant l'utilisation de l'option de la puissance interruptible et de l'efficacité énergétique qui pourraient être ciblées géographiquement plutôt que de procéder à l'investissement demandé [...] ».

La Régie explique ses limitations comme suit :

La Régie considère que cette préoccupation dépasse le cadre de la présente demande et juge nécessaire de préciser que c'est le Projet du Transporteur qu'elle examine, et non un projet alternatif que l'intervenante pourrait vouloir lui soumettre.⁷ » (nos soulignés)

⁵ D-2009-068, R-3696-2009, p. 6.

⁶ Ibid., p. 6-7.

⁷ Ibid., p. 7.

La Régie continue en citant sa décision D-2007-45, où elle avait précisé que la Régie « approuve ou refuse un projet faisant l'objet d'une demande d'autorisation sur la base des renseignements fournis, dont, le cas échéant, ceux relatifs aux autres solutions que le Transporteur a envisagées » (nos soulignés). Elle rappelle que, quoiqu'un intervenant peut expliquer pourquoi le Projet, tel que présenté, ne devrait pas être autorisé, cela « ne doit pas équivaloir, en termes d'envergure, à élaborer et à soumettre à l'approbation de la Régie d'un nouveau projet »⁸.

Soulignons qu'il ne s'agissait pas d'un projet mineur, mais d'une mise à niveau du réseau de transport principal, d'un coût de plus de 250 millions \$⁹.

Si l'étude d'un projet alternatif qui n'a pas été envisagé par le Transporteur est exclue de la portée d'un dossier en vertu de l'art. 73, il découle *a fortiori* qu'une telle audience n'est pas le forum approprié pour faire l'étude de la planification du Transporteur.

Les décisions auxquelles je fais référence sont disponibles sur le site de la Régie.

Citation :

Notons par ailleurs que des processus d'approbation des projets, tant sur le plan énergétique qu'environnemental, existent également aux États-Unis, ce qui n'a pas empêché la FERC d'exiger l'Annexe K pour l'ensemble des services publics sous sa compétence. (p. 53)

Demande :

5.1 Veuillez préciser à quels processus vous faites référence.

Réponse 5.1 :

Les investissements en infrastructure de transport sont assujettis aux États-Unis à plusieurs processus d'approbation, tant fédéral qu'étatique et tant énergétique qu'environnemental. Étant donné que ces derniers varient d'un État à un autre, cette réponse est loin d'être exhaustive. Elle est fournie à titre indicatif, et ne présente pas nécessairement l'ensemble des nuances nécessaires pour apprécier la portée de chacun des processus mentionnés.

Dans plusieurs États, une approbation au préalable est requise du régulateur énergétique à l'effet que l'investissement prévu est dans l'intérêt public. Au Vermont, par exemple, en vertu de la section 248 des Lois consolidées du Vermont (30 V.S.A. § 248), il est interdit de commencer la préparation d'un site pour construction des installations devant servir notamment pour le transport d'électricité, si le régulateur (le Public Service Board of Vermont) n'a pas préalablement certifié que lesdites installations vont promouvoir le bien-être de l'État (« unless the public service board first finds that the same will promote the general good of the state and issues a certificate to that effect »).

⁸ Ibid.

⁹ D-2009-109, R-3696-2009, p. 6.

Avant de faire cela, le PSB doit tenir des audiences publiques techniques et non techniques, avoir constaté que le projet :

- will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.
- is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures,
- will not adversely affect system stability and reliability;
- will result in an economic benefit to the state and its residents;
- will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment and the public health and safety,
- is consistent with the principles for resource selection expressed in that company's approved least cost integrated plan¹⁰.

Par ailleurs, le PSB doit notifier les différents départements (ministères) concernés de l'État et les municipalités affectées, ainsi que toute ONG qui a indiqué préalablement son intérêt dans la matière, et doit recevoir de la preuve sur l'ensemble des enjeux mentionnés dans la section 248.

À New York, il s'agit d'un Certificate of Public Convenience and Necessity émise par la Public Service Commission, en vertu de l'art. 68 de la Public Service Law¹¹.

Plusieurs États ont aussi des Siting Boards. Par exemple, le Massachusetts Energy Facilities Siting Board doit autoriser la construction des installations importantes d'infrastructure énergétique, avec le mandat de s'assurer que l'État ait des approvisionnements fiables en énergie, avec un minimum d'impact sur l'environnement, et au moindre coût¹². Le Siting Board représente l'État devant la FERC¹³. Voici une description du Siting Board, tirée de son site internet:

How Does the Siting Board Process Work?

The Siting Board review process is a legal proceeding, designed to protect the rights of all participants, in which the burden is on the developer to demonstrate that the proposed project meets

¹⁰ http://www.state.vt.us/psb/document/Citizens_Guide_to_248.pdf

¹¹ Site internet de la PSC.

¹² G.L. c. 164, §69H

¹³

http://www.mass.gov/?pageID=eoeewaterterminal&L=3&L0=Home&L1=Energy,+Utilities+%26+Clean+Technologies&L2=Energy+Facilities+Siting+Board&sid=Eoeea&b=terminalcontent&f=dpu_siting_efsbddivrespon&csid=Eoeea

the requirements set forth in the Siting Board's statute. During the proceeding, parties may present witnesses and evidence, ask written questions, examine each other's witnesses, and make arguments as to whether the evidence indicates that a proposed project should be approved, and if so, under what conditions. The Siting Board acts as a fact finder, and approves or rejects a proposed project based on the evidence developed during the proceeding. The process includes the following stages:

Public Comment Hearing: The public comment hearing is a forum where the general public can learn about and comment on the proposed project. It is held in the evening in the vicinity of the proposed project, so that as many people as possible can participate.

Discovery: The developer responds to written questions (called "discovery") from the Siting Board staff and individuals or groups that have been permitted to intervene as a party ("intervenor"). Intervenors may present expert testimony if they wish to do so; if so, they must respond to discovery by the developer and the staff, and may be required to respond to discovery by other intervenors.

Evidentiary Hearings: Witnesses are questioned under oath by Siting Board staff, the developer, and intervenors in a process that resembles a hearing in a court of law.

Briefs: The developer intervenors and, in some cases, limited participants provide written arguments as to why the evidence indicates that the proposed project should or should not be approved.

Decision: Three to four months after the briefs are submitted, the Siting Board staff issues a Tentative Decision approving or rejecting the project. After a short comment period, the Siting Board meets in public to vote on whether to accept the Tentative Decision. The Final Decision reflects any changes made at the Siting Board meeting.¹⁴

La plupart, sinon la totalité, des États ont des processus d'approbation environnementale. À titre d'exemple, dans l'État de New York, la plupart des projets énergétiques requièrent une étude d'impacts environnementaux en vertu de la State Environmental Quality Review Act (SEQRA)¹⁵. Techniquement, c'est l'existence des impacts environnementaux découlant de la décision gouvernementale d'approuver un projet qui déclenche le processus SEQR. Il importe de souligner que l'étude d'impact est élaborée par l'agence gouvernementale en question (p. ex. le régulateur énergétique), et non pas par le promoteur du projet. Cela dit, les frais sont imputables au promoteur.

Similairement, avant d'émettre une autorisation qui peut créer des impacts environnementaux, les entités fédérales (notamment la FERC et le Département de l'énergie) doivent procéder à une étude d'impacts environnementaux en vertu de National Environmental Policy Act (NEPA).

Mentionnons également que, avant de construire une nouvelle interconnexion internationale, il faut obtenir un Presidential Permit¹⁶. Ce processus est géré par l'Office of Electricity Delivery and Energy Reliability du Department of Energy. Avant de l'émettre, DOE doit constater que le projet est d'intérêt public, tenant compte notamment des impacts environnementaux (NEPA) et de ses effets sur la fiabilité énergétique. DOE compte

¹⁴http://www.mass.gov/?pageID=eoeecaterminal&L=3&L0=Home&L1=Energy,+Utilities+%26+Clean+Technologies&L2=Energy+Facilities+Siting+Board&sid=Eoeeca&b=terminalcontent&f=dpu_siting_faqs_siting&csid=Eoeeca

¹⁵ 6 NYCRR Part 617, sous l'autorité législative de la Environmental Conservation Law Sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113.

¹⁶ En vertu de l'Executive Order 10485, amendé par EO 12038.

s'attend également à ce que les services publics propriétaires des installations respectent les principes d'accès ouvert et non-discrimination du Federal Power Act, Order 888 et des ordonnances subséquentes de la FERC¹⁷.

5.2 Veuillez fournir la liste et copie de tous les processus auxquels vous faites référence.

Réponse 5.2 : Voir la réponse à la demande 5.1.

Citation :

« Il en découle que des méthodologies de calcul de l'ATC qui sont devenues obligatoires en vertu de l'Ord. 729 (et 729-A qui l'a suivie le 5 mai 2010) font implicitement partie de la mise à jour du pro forma de la FERC, entamée dans l'Ord. 890 et al. (page 76)

Ce calendrier a été modifié dans l'Ord. 729-A et dans l'Ord. 729-B, la FERC a finalement indiqué que ces normes deviendront obligatoires le 1^{er} avril 2011. (p. 78).

Demande 6 :

6.1 Veuillez indiquer la date à laquelle les méthodologies de calcul de l'ATC seraient devenues obligatoires en vertu des ordonnances 729 et 729-A.

Réponse 6.1 :

L'ord. 729, émise le 24 novembre 2009, a précisé que les normes de fiabilité relativement à l'ATC seraient en vigueur le premier jour du premier trimestre du calendrier qui arrive douze mois après la date où ces normes de fiabilité sont approuvées par l'ensemble des autorités réglementaires applicables :

95. As approved, the Reliability Standards shall become effective on the first day of the first calendar quarter that is twelve months beyond the date that the Reliability Standards are approved by all applicable regulatory authorities. The Commission finds that the approved implementation schedule strikes a reasonable balance between the need for timely reform and the needs of transmission service providers and transmission operators to make adjustments to their calculations of available transfer capability, capacity benefit margin and transfer reliability margin. To the extent necessary, we clarify that, under this plan, the Reliability Standards shall become effective on the first day of the first quarter occurring 365 days after approval by all applicable regulatory authorities. Approval by the Commission will be effective 60 days after the date of publication of this Final Rule in the Federal Register. If a transmission service provider or transmission operator is unable to implement these Reliability Standards within the time allowed, requests for extension should be considered through NERC's enforcement and compliance program. (nos soulignés)

Toutefois, la FERC a reçu plusieurs demandes de *rehearing* soulignant la confusion créée

¹⁷ Federal Register, Vol. 75, No. 43, 5 mars 2010, p. 10229.

par cette formulation, dont notamment le fait que l'expression « all applicable regulatory authorities » semblait inclure des régulateurs canadiens.

Dans son ordonnance 729 A (Order on Clarification), émise le 15 mai 2010, la FERC a donné raison à ces demandes, en indiquant que sans d'autres clarifications concernant les approbations réglementaires au Canada, ce calendrier d'implantation ne peut définir les dates obligatoire d'application à l'intérieur des États-Unis. Ainsi, elle modifie le calendrier pour exiger que ces normes de fiabilité deviennent obligatoires aux États-Unis dès le premier jour du premier trimestre qui arrive au moins 365 jours après la publication de l'ord. 729 dans le Federal Register, soit le 1^{er} janvier 2011.

7. The Commission agrees that, without further clarification about regulatory approvals in the Canadian provinces, the approved implementation schedule is not determinative as to the effective date of the MOD Reliability Standards within the United States. Without a clear process for informing entities of the approval by all appropriate regulatory authorities, the implementation schedule presents some compliance risks. NERC has indicated that it would support implementation of the MOD Reliability Standards within the United States as of the first day of the first quarter occurring 365 days after the publication of Order No. 729 in the Federal Register. The Commission agrees that this implementation schedule is appropriate. Accordingly, the Commission clarifies that the MOD Reliability Standards shall become effective within the United States as of the first day of the first quarter occurring 365 days after the publication of Order No. 729 in the Federal Register, i.e., January 1, 2011. (Ord. 729-A)

Finalement, dans son Ordonnance 729-B, émise le 15 juillet 2010, la FERC a encore une fois « *granted requests for rehearing* » sur le calendrier d'implantation des normes de fiabilité relativement à l'ATC. Elle décide finalement de baser la date où les normes devront obligatoirement être en vigueur sur la date d'émission de l'Ord. 729, plutôt sur sa date de publication dans le Federal Register.

13. Upon further consideration, the Commission has determined that the implementation schedule of the MOD Reliability Standards should be keyed to the date of approval of the Reliability Standards, as originally contemplated in Order No. 729, and not the date of publication of Order No. 729 in the *Federal Register*. Accordingly, the Commission grants rehearing of its determination in Order No. 729-A and directs that the MOD Reliability Standards shall become effective within the United States as of the first day of the first quarter occurring 365 days after their approval by the Commission, i.e., April 1, 2011.

Ainsi, ces normes deviendront obligatoires aux États-Unis le 1^{er} avril 2011.

En même temps, la FERC a précisé que les amendements aux Appendices C nécessaires pour permettre l'application tarifaire de ces normes de fiabilité devront être déposées auprès de la FERC au plus tard 90 jours avant cette date, soit le 1^{er} janvier 2011 (Ord. 729-B, para. 16).

Citation :

Par ailleurs, étant donné que l'utilisation de ces normes pour le calcul de l'ATC sera obligatoire à partir du 1^{er} avril 2010, et donc qu'elles seront obligatoirement intégrées dans les OATT des transporteurs américains, l'ajout de l'Appendice C-1 tel que proposé, est essentiellement futile. Aucune raison n'a été avancée pour le promulguer autre que pour démontrer la conformité avec l'Ord. 890. Toutefois, même si cet Appendice aurait été [sic] en conformité avec l'Ord. 890 avant l'adoption de l'Ord. 729 – ce qui est douteux – elle ne le sera certainement plus après le 1^{er} janvier 2011. (p. 87)

Demande 7 :

7.1 Veuillez expliquer la provenance des dates (1^{er} avril 2010, 1^{er} janvier 2011) mentionnées dans l'extrait cité en référence.

Réponse 7.1 :

Quant à la première date, il s'agit d'une erreur cléricale, qui se retrouve à la page 87 et aussi à la page 92. Dans les deux places, la date devrait être le **1^{er} avril 2011**.

La deuxième date mentionnée, celle du 1^{er} janvier 2011, est expliquée dans le passage suivant de mon rapport d'expert, à la page 78 :

Il est opportun ici de mentionner que, dans l'Ord. 729-A émise le 5 mai 2010, la FERC a revu le calendrier d'implantation de ces normes de fiabilité. Dans l'Ord. 729, celle-ci avait précisé que les MOD Reliability Standards entreraient en vigueur au début du premier trimestre calendrier douze (12) mois après l'approbation de ces normes par toute entité réglementaire pertinente. Ce calendrier a été modifié dans l'Ord. 729-A, et dans l'Ord. 729-B, la FERC a finalement indiqué que ces normes deviendront obligatoires le 1^{er} avril 2011¹⁸. Dans cette même ordonnance, FERC précise que les modifications nécessaires aux Appendices C des OATT des transporteurs devront être déposées 90 jours avant cette date, soit le 1^{er} janvier 2011. (soulignés ajoutés)

Ainsi, les normes sont obligatoires à partir du 1^{er} avril 2011; toutefois, pour ce faire, les services publics soumis à la compétence de la FERC doivent déposer des tarifs qui les intègrent dès le 1^{er} janvier 2011.

Voir aussi la réponse 6.1, ci-dessus.

¹⁸ Ord. 729-B, paragraphe 13. Il est intéressant de noter que la modification du calendrier d'implantation découle de l'incertitude quant aux régulateurs canadiens. « It is unclear whether and when the Canadian provinces will act on these MOD Reliability Standards » (para. 14).

**DEMANDE RELATIVE À LA MODIFICATION DES TARIFS ET CONDITIONS DES
SERVICES DE TRANSPORT D'HYDRO-QUÉBEC**

DOSSIER : R-3669-2008, Phase 2

MÉMOIRE DE

**ÉNERGIE BROOKFIELD MARKETING INC.
(EBMI)**

**PRÉSENTÉ À LA
RÉGIE DE L'ÉNERGIE DU QUÉBEC**

LE 10 JUIN 2009

TABLE DES MATIÈRES

1.	L'APPLICATION DES ORDONNANCES 890, 890A ET 890B DE LA FERC	3
2.	LES OBJECTIFS PRINCIPAUX VISÉS PAR L'ORDONNANCE 890 DE LA FERC	4
3.	LE PROCESSUS DE PLANIFICATION DES INSTALLATIONS DE TRANSPORT	5
4.	CESSION OU REVENTE DE CAPACITÉ	8
5.	SERVICES FERMES ET CONDITIONNELS ET NOUVELLE RÉPARTITION DE LA PRODUCTION	9
6.	ACQUISITION DU SERVICE DE TRANSPORT : DÉLAI POUR ÉTUDES D'IMPACTS, PROLONGATION POUR COMMENCEMENT DU SERVICE ET PRIORITÉ DES RÉSERVATIONS	10
7.	AUTRES MODIFICATIONS	10
8.	CONCLUSION	11

1. L'APPLICATION DES ORDONNANCES 890, 890A ET 890B DE LA FERC

Dans le cadre de sa présente demande, le Transporteur demande à la Régie de modifier certains articles de ces *Tarifs et conditions* pour donner suite aux ordonnances 890, 890A et 890B de la FERC. Le Transporteur précise à la pièce HQT-1, document 1, p. 5 qu'il demande à la Régie d'approuver « les modifications nécessaires » aux *Tarifs et conditions* afin d'y refléter ces ordonnances.

L'on comprend de ce qui précède que le Transporteur reconnaît l'importance de respecter les principes développés dans ces ordonnances d'autant plus que son réseau « possède des interconnexions permettant des échanges d'électricité avec les réseaux de l'Ontario, du Nouveau-Brunswick et du Nord-est des États-Unis » (HQT-8, document 6, p. 2).

Le Transporteur mentionne aussi ce qui suit à la pièce HQT-8, document 6, p. 6 :

« Le Transporteur applique rigoureusement ses tarifs et ses conditions de service, afin d'assurer un accès non discriminatoire au réseau, conformément aux règles nord américaines en la matière et en fonction des lois et de la réglementation applicables au Québec, telles qu'appliquées par la Régie de l'énergie du Québec (la « Régie ») qui a compétence exclusive pour fixer ou modifier les tarifs et les conditions auxquels l'électricité est transportée par le Transporteur. » (Nos soulignés)

D'ailleurs, le Transporteur reconnaît un des principes fondamentaux de l'ordonnance 888 soit celui de la réciprocité tel que prévu à l'article 6 de ses *Tarifs et conditions*.

Ainsi, affirmer de façon générale que la FERC n'a pas juridiction sur le Transporteur, ce qui n'est nullement admis, est un faux débat. En effet, l'objectif du Transporteur par la présente demande est de tenter de rendre ses *Tarifs et conditions* conformes aux exigences des ordonnances 890 et suivantes de la FERC et ce, notamment pour permettre à Hydro-Québec d'effectuer des activités marchandes aux États-Unis. La difficulté du présent dossier est de déterminer si le Transporteur propose un texte qui représente fidèlement la portée de ces ordonnances, si les modifications proposées cadrent avec les objectifs recherchés par ces ordonnances et s'il est bien fondé ou non dans certains cas de refuser d'apporter des ajouts à ses *Tarifs et conditions*. Il est important de rappeler que l'objectif premier de la FERC, en élaborant ces ordonnances, est de favoriser un marché de l'électricité plus compétitif afin ultimement d'avoir un prix d'électricité plus bas.

Nous allons donc dans ce contexte aborder les objectifs principaux visés par les ordonnances pour ensuite discuter de certaines modifications ou absence de modifications à l'égard des *Tarifs et conditions* proposés par le Transporteur. Nous nous réservons naturellement le droit en audience de contre-interroger les témoins du Transporteur et d'aborder certaines modifications proposées par le Transporteur qui n'auront pas fait l'objet d'un débat spécifique dans le cadre de notre preuve écrite. Notre mémoire se veut un complément au rapport de notre expert monsieur William K. Marshall joint aux présentes.

D'ailleurs, sur la question de la réciprocité et de l'obligation pour le Transporteur d'avoir des *Tarifs et conditions* qui respectent les dispositions du *pro forma* OATT (soit « substantially conform or are superior to the revised pro format OATT »), nous vous référons plus spécifiquement au rapport d'expertise de monsieur Marshall joint aux présentes.

2. LES OBJECTIFS PRINCIPAUX VISÉS PAR L'ORDONNANCE 890 DE LA FERC

Dès la première page de l'ordonnance 890 de la FERC, on note que :

« The Commission amends its regulations and the *pro forma* open access transmission tariff (*pro forma* OATT), adopted in Order Nos 888 and 889, to remedy opportunities for undue discrimination and address deficiencies in the *pro forma* OATT that have become apparent since the issuance of these orders. » (Nos soulignés)

L'objet de l'ordonnance 890 y est décrit de la façon suivante :

« THE PURPOSE OF THE FINAL RULE :

- To strengthen the *pro forma* OATT to ensure that it achieves its original purpose of remedying undue discrimination.
- To provide greater specificity in the *pro forma* OATT to reduce opportunities for the exercise of undue discrimination, make undue discrimination easier to detect, and facilitate the Commission's enforcement.
- To increase transparency in the rules applicable to planning and use of the transmission system. »

Au sommaire de l'ordonnance 890 avant la table des matières on peut lire:

« Summary: The Federal Energy Regulatory Commission is amending the regulations and the *pro forma* open access transmission tariff adopted in Order Nos. 888 and 889 to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. The final rule is designed to: (1) strengthen the *pro forma* open-access transmission tariff, or OATT, to ensure that it achieves its original purpose of remedying undue discrimination; (2) provide greater specificity to reduce opportunities for undue discrimination and facilitate the Commission's enforcement; and (3) increase transparency in the rules applicable to planning and use of the transmission system. »

Il s'agit de la base et du fondement même de l'ensemble des changements proposés à cette ordonnance, qu'il s'agisse de questions relatives à l'uniformité et à la transparence pour le calcul de la capacité de transfert disponible ou encore en ce qui a trait au processus de planification des installations de transport.

Au paragraphe 39 de l'ordonnance, nous prenons acte également des commentaires suivants :

« 39. The Commission concludes that reforms are needed to address deficiencies in the pro forma OATT that have become apparent since 1996, by limiting remaining opportunities for undue discrimination. As the Commission found in Order No. 888, it 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 to themselves. Such an incentive can lead to unduly discriminatory behavior against third parties, particularly if public utilities have unnecessarily broad discretion in the application of their tariffs. » (Nos soulignés)

Ainsi, la question des risques de discrimination induite et l'importance de la transparence est au cœur de l'ensemble des modifications apportées par la FERC et doit donc être considérée dans l'ensemble de l'analyse des modifications proposées au texte des *Tarifs et conditions* du Transporteur.

3. LE PROCESSUS DE PLANIFICATION DES INSTALLATIONS DE TRANSPORT

Tel qu'indiqué en préambule à notre demande de renseignements (HQT-8, document 3, p. 3), l'ordonnance 890 de la FERC consacre près de 100 pages de cette ordonnance à la question du processus de planification des installations de transport. En vertu de cette ordonnance, une obligation est créée à l'égard d'un transporteur et selon nous, à l'égard du Transporteur d'établir un processus de planification des installations de transport qui soit coordonné, ouvert et transparent avec son réseau, ses clients de service point à point et toute autre partie intéressée incluant la coordination avec les systèmes qui lui sont interconnectés.

Tel qu'indiqué par notre expert monsieur Marshall, dès l'ordonnance 888, la FERC énonçait déjà être en faveur d'un processus par lequel la planification se ferait de façon conjointe avec les clients.

Cette nouvelle et importante obligation découle de certains constats effectués à l'égard des dispositions considérées comme inadéquates en matière de planification dans le *pro forma* OATT tel qu'il existait avant les ordonnances 890. L'extrait suivant de l'ordonnance 890 (paragraphe 57) est fort pertinent à ce sujet :

« 57. The Commission concludes that reforms are needed to ensure that transmission infrastructure is evaluated, and if needed, constructed on a nondiscriminatory basis and is otherwise sufficient to support reliable and economic service to all eligible customers. As noted above, vertically-integrated utilities do not have an incentive to expand the grid to accommodate new entries or to facilitate the dispatch of more efficient competitors. Despite this, the existing pro forma OATT contains very few requirements regarding how transmission planning should be conducted to ensure that undue discrimination does not occur. » (Nos soulignés)

Le Transporteur demande à la Régie d'approuver que toutes ces nouvelles conditions ne s'appliquent pas à lui ni aux *Tarifs et conditions* compte tenu que le contexte québécois serait, selon lui, fort différent.

On doit plutôt comprendre que le Transporteur ne veut pas introduire ces nouvelles conditions aux *Tarifs et conditions*. Le Transporteur, selon nous, omet les principes de base de l'ordonnance 890 qui prône la transparence et la mise en place d'un processus de planification ouvert et coordonné pour éviter les situations de discrimination induite qui peuvent survenir lorsqu'il s'agit d'entité verticalement intégrée.

En sus des commentaires et conclusions formulés par notre expert à l'effet que le processus actuel ne répond pas aux différentes conditions mises de l'avant par la FERC, nous tenons à ajouter que le processus actuel est loin d'être aussi transparent, ouvert et coordonné que le Transporteur peut le prétendre.

Par exemple, en avril 2008, en consultant le site internet OASIS du Transporteur, nous avons constaté qu'il y avait une nouvelle étude d'impact pour le transit de 1200 MW sur un nouveau chemin appelé Québec – New Hampshire. Il semble que ce soit la première divulgation publique au Québec de l'intention d'Hydro-Québec de créer une nouvelle ligne d'interconnexion avec la Nouvelle-Angleterre.

Or, plusieurs mois auparavant, en décembre 2007, le New England ISO a rendu public sur son site web le contenu de plusieurs présentations traitant du projet de construction d'une ligne de transport d'électricité en provenance du Québec. Ces documents ont été présentés lors du Planning Advisory Committee (PAC) Meeting des 17 et 18 décembre 2007 (voir lien suivant : http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/pac/mtrls/2007/dec182007/index.html.) Le Planning Advisory Committee est directement lié aux obligations associées à l'annexe K de l'OATT en vigueur dans le New England ISO. On peut remarquer que le Transporteur a participé à cette rencontre en y faisant une présentation. Il fut de nouveau question de la nouvelle ligne lors du PAC du 30 avril 2008 (voir lien suivant : http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/pac/mtrls/2008/apr302008/index.html, voir entre autres les documents déposés par Northeast Utilities).

Par ailleurs, à notre connaissance, la présente cause tarifaire R-3669-2008, Phase 1, pourtant déposée en date du 29 juillet 2008, n'a pas fait référence au développement prévu de cette ligne et ce, même si les documents de planification du Transporteur font état des investissements prévus sur un horizon de 10 ans. Ne serait-il pas plus efficace, juste et équitable d'avoir un processus par lequel tous les intervenants au marché seraient informés des intentions de développement du Transporteur en même temps?

Il est important de noter que comparativement aux réseaux voisins (l'Ontario, New York, la Nouvelle-Angleterre et prochainement le Nouveau-Brunswick) le réseau de TransÉnergie est le seul à ne pas avoir d'annexe K. Cette situation désavantage les participants du marché québécois qui ont, en ce qui a trait aux interconnexions, moins d'information que les participants de marché des réseaux voisins. Par ailleurs, cela pose également différents problèmes au niveau de la règle de la réciprocité.

Nous estimons qu'un processus ouvert et transparent serait à l'avantage de tous les clients et participants du marché et assurerait une plus grande compétitivité. Rien n'empêche, selon nous, la tenue de rencontres avec les participants du marché où il y aurait une véritable concertation et de l'échange d'informations au niveau de la planification des installations de transport du Transporteur comme il semble déjà être le cas avec certains réseaux voisins.

Il y a aussi lieu de rappeler que dans le cadre d'une audience en vertu de l'article 73, le Transporteur présente à la Régie un investissement précis sans que l'ensemble des intervenants du marché puissent véritablement y apporter des modifications majeures. En effet, le cadre strict d'une audience ne permet pas un échange fluide entre les participants qui permettrait de modifier le projet de façon importante, comme par exemple, l'ajout de capacité d'une interconnexion pour permettre à un autre producteur d'utiliser ce nouveau lien. Par ailleurs, l'autorisation de la Régie est souvent requise après le début des constructions des installations requises et après que des engagements interviennent entre le Transporteur et ses partenaires d'affaires. Aussi, tel qu'indiqué plus haut, il y aurait un net avantage à ce que d'autres puissent dès le début du processus signifier leur intérêt à participer au développement de tels projets. De cette façon, on éviterait toute discrimination possible conformément aux buts et objectifs de l'ordonnance 890 de la FERC.

Nous notons ce qui suit à la séquence des événements dans le dossier de la ligne de l'interconnexion avec l'Ontario qui a été déposé par le Transporteur à la Régie le 26 septembre 2007, selon la décision D-2008-030, à la p. 4 :

« À la suite des événements climatiques de janvier 1998, plusieurs projets ont été envisagés afin de sécuriser l'alimentation électrique du Québec dont la construction d'une interconnexion avec l'Ontario à 315-240 kV au poste Outaouais, comprenant un poste convertisseur d'une capacité de 1 250 MW, ainsi que des infrastructures connexes. Cette construction, qui est en cours actuellement et dont l'achèvement est prévu pour avril 2009, a été autorisée par le gouvernement du Québec par le Décret 1450-2000.

Hydro-Québec dans ses activités de production d'électricité (le Producteur) a déposé en avril 2005 une demande de service de transport ferme de point à point à long terme pour une capacité réservée de 1 250 MW vers l'Ontario par l'entremise de cette nouvelle interconnexion. En octobre 2006, le Producteur et le Transporteur ont signé une convention de service de transport ferme de point à point à long terme pour une capacité réservée de 1 250 MW vers l'Ontario. »

Le Transporteur soumet dans sa preuve (HQT-1, document 1, p. 14) que la Régie a mis en place deux procédures distinctes d'examen de plaintes. Force est de constater qu'il s'agit d'un processus qui n'est pas aussi ouvert que souhaité, les documents relatifs à ces dossiers n'étant pas disponibles sur le site de la Régie de façon électronique. Une présence physique à la Régie est requise pour pouvoir obtenir les documents relatifs aux plaintes déposées contre le Transporteur sur format papier uniquement. De plus, les décisions procédurales entourant le traitement de ces plaintes ne sont pas divulguées sur le site internet de la Régie ce qui rend difficile le suivi de ces dossiers par les autres parties pouvant être intéressées à assister aux audiences. De façon générale, les sujets traités dans le cadre de ces plaintes peuvent avoir un impact important à l'égard des participants de marché en ce qui a trait à l'application des *Tarifs et conditions*. De plus, sans vouloir porter de blâme à l'égard du processus réglementaire, il s'agit somme toute d'une démarche qui peut s'avérer assez longue. Il n'y a qu'à penser aux dossiers de plaintes impliquant présentement Newfoundland and Labrador Hydro. À la lumière de ces commentaires et surtout ce qui est visé par les différents principes de l'ordonnance de la FERC, nous estimons que le processus actuel d'examen de plaintes ne répond pas à ce qui est requis selon les ordonnances de la FERC. Aussi, l'adoption d'une annexe K qui encadrerait la planification du réseau permettrait un allègement réglementaire évident puisqu'une grande partie du débat se ferait en groupe de travail similaire au PAC du New England ISO mentionné ultérieurement dans le présent texte.

Finalement, il va sans dire que la décision du Transporteur de ne pas inclure l'annexe K et les principes qui y sont reliés dans les *Tarifs et conditions* proposés a des répercussions sur bon nombre de dispositions comme par exemple :

- l'article 2.2 portant sur les droits de renouvellement et la différence quant à la mise en vigueur de cet article qui réfère au dépôt de l'annexe K dans l'OATT *pro forma* de la FERC ;
- l'article 15.4 prévoyant les services fermes et conditionnels et la nouvelle répartition de la production n'a nullement été modifié pour tenir compte des nouvelles obligations en matière de processus de planification et l'ajout de l'annexe K ;
- l'article 16.1 portant sur les conditions à respecter par les clients du service de transport n'a pas été modifié pour tenir compte du processus de planification ;
- l'article 17.2 intitulé « Demande complète » n'a pas fait l'objet de modification tel que proposé dans l'OATT *pro forma* de FERC ;
- l'article 28.2 portant sur les responsabilités du Transporteur n'a pas non plus été ajusté ;
- l'article 31.6 sur la mise à jour des renseignements sur la charge et les ressources n'a pas été modifié ;
- au niveau de la partie IV des *Tarifs et conditions* il en va de même pour les articles 36.3, 36.5, 37, 38, 38.2, 38.3, 38.5 et 40.3 ;

4. CESSION OU REVENTE DE CAPACITÉ

Dans sa preuve à l'égard des modifications proposées, le Transporteur n'explique pas pourquoi le délai du 1^{er} octobre 2010 (proposé par la FERC) pour la date limite de retrait du plafond devrait être justifié lorsque l'on considère la date éventuelle d'entrée en vigueur des *Tarifs et conditions*.

Aussi, dans sa preuve, le Transporteur mentionne (fiche de l'article 23.1) :

« D'autre part, FERC refuse d'appliquer aux affiliés du Transporteur pour la revente des conditions différentes de celles qui s'appliquent à des tiers car cela ne ferait que limiter inutilement la fluidité du marché. »

Devons-nous comprendre que la revente pourra se faire sans aucun problème entre les « entités affiliées » du Transporteur ? Et si oui, quel est l'impact de cette modification à l'égard des tiers ? Le Transporteur ne nous fournit aucune preuve à cet égard. Nous avons également d'autres questionnements quant à la modification demandée. Au niveau de l'article 23.3, il est prévu que toutes les ventes et les cessions de capacité doivent être effectuées par l'entremise du site OASIS du Transporteur, ou affichées sur celui-ci, au plus tard à la date de début du service faisant l'objet de la nouvelle cession. Par ailleurs, le Transporteur indique que les revendeurs peuvent également se servir du site OASIS du Transporteur pour afficher la capacité de transfert disponible pour la revente.

À une question formulée par UC dans le cadre de sa demande de renseignements (HQT-8, document 8, p. 7), le Transporteur précise que rien n'empêche un revendeur de publiciser par tout autre moyen ou d'informer les cessionnaires éventuels de la disponibilité du service à céder.

L'on comprend de ce qui précède que selon le Transporteur, un revendeur respecterait les dispositions de l'article 23.3 s'il convenait de conditions de vente ou de cession d'une capacité de transfert directement avec un tiers sans l'afficher préalablement sur le site OASIS. Dans le contexte où le Transporteur propose que cet article puisse s'appliquer à ses « entités affiliées », nous estimons que cela risque de créer des situations potentielles de discrimination. Il y a lieu de revoir la portée des modifications proposées à la lumière de la situation particulière du « Transporteur » et de ses « entités affiliées ».

5. SERVICES FERMES ET CONDITIONNELS ET NOUVELLE RÉPARTITION DE LA PRODUCTION

Le Transporteur, à la pièce HQT-1, document 1, p. 22-23, mentionne qu'il propose de modifier l'article 15.4 des *Tarifs et conditions* pour offrir, aux clients du service ferme à long terme de point à point, un service ferme conditionnel tel que prévu par l'ordonnance 890. Le Transporteur ajoute qu'il pourra évaluer la « possibilité d'offrir une nouvelle répartition des ressources situées dans la zone de réglage, de celle du client ou de celle en provenance d'un tiers qui y aura consenti, comme solution de rechange aux ajouts au réseau qui seraient requis pour offrir le service de transport ferme à long terme. »

En demande de renseignements, nous avons demandé au Transporteur d'expliquer d'où venait cette possibilité d'offrir une nouvelle répartition (HQT-8, document 3, p. 14-15). À notre avis, le Transporteur n'explique pas pourquoi celui-ci serait justifié d'effectuer une répartition en fonction des ressources situées dans la zone de réglage du Transporteur par opposition à l'expression « sur son réseau de transport ».

À l'égard de cette problématique, nous vous référons aux commentaires formulés par notre expert dans son rapport d'expertise joint aux présentes.

6. ACQUISITION DU SERVICE DE TRANSPORT : DÉLAI POUR ÉTUDES D'IMPACTS, PROLONGATION POUR COMMENCEMENT DU SERVICE ET PRIORITÉ DES RÉSERVATIONS

Dans le cadre de l'ordonnance 890 de la FERC, pour inciter les fournisseurs de transport à respecter les délais pour les études d'impacts, des pénalités sont prévues pour le non-respect systématique des délais d'étude. Pour sa part, le Transporteur à l'article 19.9 des *Tarifs et conditions* ne propose pas d'appliquer la pénalité prévue à l'ordonnance 890 puisque selon lui celle-ci n'a aucun impact sur la disponibilité des ressources qui interviennent dans la réalisation des études d'impacts. Nous estimons qu'une pénalité devrait être prévue conformément à l'ordonnance 890 de la FERC. Nous croyons qu'il doit y avoir une sanction à défaut pour le Transporteur de procéder avec diligence à la réalisation des études d'impacts.

7. AUTRES MODIFICATIONS

Il existe certaines autres modifications qui nécessitent quelques commentaires :

- EBMI est d'avis que les éléments composant les formules de calcul de la capacité de transfert décrites à l'annexe C devraient être expliqués d'avantage. En effet, les modalités d'application des composantes incluses dans les équations devraient être spécifiées afin d'éviter toute ambiguïté. Une simple définition n'est pas suffisante pour avoir une bonne compréhension des calculs.
- Acquisition du service de transport (priorité de réservation)

La Régie dans sa demande de renseignements (HQT-8, document 1, p. 15) indique ceci en préambule :

« Préambule :

La modification prévue aux Tarifs et conditions prévoit que la priorité sera accordée à la demande ou à la réservation du client admissible qui offre le prix le plus élevé, avant de tenir compte de la date et de l'heure de la demande et de la réservation. Par ailleurs, dans la description de l'impact de la modification, le Transporteur précise *qu'au Québec, la priorité possible en fonction du prix ne s'applique pas, puisque la Régie n'autorise pas le Transporteur à accorder ce rabais.* »

Ainsi, à la lumière de ce qui précède, la Régie s'interroge en ce qui a trait à la justification du texte concernant la priorité accordée à la demande ou à la réservation du client offrant le prix le plus élevé dans le contexte où la priorité en fonction du prix ne s'applique pas au Québec.

Le Transporteur répond de façon laconique :

« Il s'agit du texte approuvé par la FERC qui ne présume en aucune façon de la discrétion que pourrait exercer la Régie quant aux prix applicables aux services de transport. »

DEMANDE RELATIVE À LA MODIFICATION DES TARIFS ET CONDITIONS DES
SERVICES DE TRANSPORT D'HYDRO-QUÉBEC

DOSSIER : R-3669-2008, Phase 2

REVISED EVIDENCE OF

WILLIAM K MARSHALL

HYDRO-QUÉBEC TARIFF RELATIVE TO FERC ORDER 890

Supprimé :

SUBMITTED TO
THE RÉGIE DE L'ÉNERGIE DU QUÉBEC

SEPTEMBER 28, 2010

Supprimé : JUNE 10, 2009

TABLE OF CONTENTS

1. INTRODUCTION.....3

2. OBJECTIVE OF THE FERC ORDERS.....3

3. TRANSMISSION SERVICE SUBJECT TO RE-DISPATCH OR CONDITIONAL CURTAILMENT4

4. REQUIREMENTS FOR A COORDINATED, OPEN AND TRANSPARENT TRANSMISSION PLANNING PROCESS5

 4.1 Overview of the Planning Issues5

 4.2 Planning Process Requirements6

 4.3 Hydro-Québec Position on a Planning Process9

 4.4 Reciprocity Provisions of FERC Orders12

 4.5 NBSO Planning Process15

 4.6 Planning Processes of Other Non Public Utilities.....16

5. CONCLUSION17

Appendices

- 1- NBSO Stakeholder Workshop
- 2- NBSO Transmission Planning Process
 - a. NBSO Transmission Planning Methodology and Governance
 - b. NBSO Transmission System Planning Performance Requirements
 - c. Maritimes Area Technical Planning Committee
 - d. Notice of Proposed Amendment to the Market Rules (Re- Transmission Planning Process)
 - e. NBSO 10-Year Assessment of Adequacy of Generation and Transmission Facilities in New Brunswick 2010-2020 - Executive Summary
- 3- Proposed Changes to the NBSO Open Access Transmission Tariff
 - a. NBSO Notice of Technical Conference
 - b. NBSO PRESENTATION (9th September 2010)

Evidence of William K Marshall

Hydro-Québec Tariff Relative to FERC Order 890

Supprimé :

1. INTRODUCTION

William K Marshall was engaged by Brookfield Energy Marketing Inc (BEMI) to review the Hydro-Québec evidence filed with la Régie de l'énergie (Régie) on March 29, 2009 (and subsequently revised June 23, 2010) with regards to FERC Orders 890, 890-A, 890-B, 890-C and 890-D (FERC Orders). More specifically, the proposed changes to the Hydro-Québec Open Access Transmission Tariff (OATT) were to be considered relative to the pro forma tariff resulting from the FERC Orders and deviations from the pro forma were to be determined.

Supprimé :

Supprimé : and

Supprimé :

As a result of the review a number of deviations from the FERC pro forma tariff were determined. This report will concentrate on the following two deviations.

1. Section 15.4 - Obligation to Provide Transmission Service that Requires Expansion or Modification of the Transmission System, Redispatch or Conditional Curtailment
2. Attachment K – Transmission Planning Process

2. OBJECTIVE OF THE FERC ORDERS

The general purpose of Order 890 and the follow up re-hearing Orders 890-A and 890-B is "amending the regulations and the pro forma open access transmission tariff adopted in Order Nos. 888 and 889 to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential." More specifically the changes in each of the Orders are designed to:

Supprimé : "

- (1) strengthen the pro forma OATT to ensure that it achieves its original purpose of remedying undue discrimination;
- (2) provide greater specificity to reduce opportunities for undue discrimination and facilitate the Commission's enforcement; and
- (3) increase transparency in the rule applicable to planning and use of the transmission system."

3. TRANSMISSION SERVICE SUBJECT TO RE-DISPATCH OR CONDITIONAL CURTAILMENT

In Section 15.4 (b) and (c) of the HQT tariff (other than wording related to Attachment K planning process which is considered in the next section) there are two wording deviations from the pro forma tariff resulting from the FERC Orders as follows:

- a. The words "*upon reception of a written request from the Transmission Customer*" are inserted into section 15.4 (b) and section 15.4 (c) of the HQT tariff whereas they do not appear in the pro forma tariff.
- b. The Transmission Provider's obligation to "*use due diligence to provide redispatch from its own resources until...*" in the proforma tariff is changed to "*use due diligence to provide redispatch from resources in the Transmission Provider's Control Area...*" in the HQT tariff. Underlines were added.

These changes are problematic.

This section 15.4 of the tariff specifies what the obligations of the Transmission Provider are subject to providing service and should not include an obligation placed on the Transmission Customer to provide "*a written request*". The obligation on the Transmission Customer is simply to submit a Completed Application as set out in Section 17.1 to 17.3. If the Transmission Provider determines that a System Impact Study (SIS) is required then notification is provided to the Customer as per section 19.1 and to proceed the Customer completes an SIS Agreement as per 19.2 and 19.3. This SIS Agreement will provide the written request needed. It will also specify exactly what options the Customer wants studied – system upgrades, re-dispatch and/or conditional curtailment. The addition of a requirement for a "*written request*" by HQT in section 15.4 (b) and (c) is redundant and could delay provision of service.

The issue of providing re-dispatch from "*its own resources*" versus "*resources in the Transmission Provider's Control Area*" is one with serious ramifications. The obligation of HQT to study all resources in the Quebec interconnection control area is not the issue. In fact it is its obligation as specified in 19.3 to "*identify all resources located within the Transmission Provider's Control Area that can significantly contribute toward relieving the system constraint and (2) provide a measurement of each resource's impact on the system constraint. If the Transmission Provider possesses information indicating that any resource outside its Control Area could relieve the constraint, it shall identify each such resource in the System Impact Study.*" This information is to be provided to the Customer as a result of the SIS and to be acted upon by the Customer. If an agreement is to be struck between the Customer and a third party it should be negotiated by the Customer.

The role of the Transmission Provider should not be commercial with respect to the third party because it would inject the Transmission Provider into market negotiations. Its commercial role with respect to re-dispatch should be limited to "*its own resources*" and not all "*resources in the Transmission Provider's Control Area*". To be clear it is important to understand here that the Transmission Provider in the eyes of FERC is not just HQT but rather the integrated utility Hydro-Québec and includes its generation resources. As such the corporate HQ can do an internal agreement to increase transmission usage in its total best interest. However

Supprimé :

having HQT deal directly with a third party that is a potential competitor to HQP is problematic as it could introduce undue discrimination.

For these reasons explained above the wording "use due diligence to provide redispatch from resources in the Transmission Provider's Control Area..." in the HQT tariff in section 15.4 should be changed back to the wording "use due diligence to provide redispatch from its own resources" as set out in the pro forma OATT.

4. REQUIREMENTS FOR A COORDINATED, OPEN AND TRANSPARENT TRANSMISSION PLANNING PROCESS

4.1 Overview of the Planning Issues

A major new requirement under the FERC Orders is for the Transmission Provider to establish a coordinated, open and transparent transmission planning process with participation by its transmission customers, neighbouring systems, regulators and other interested parties.

The planning process is to be documented as an attachment to the Transmission Provider's Tariff (Attachment K in the Pro Forma) and must satisfy nine principles detailed by FERC - coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new projects.

The planning process requirement applies to all jurisdictional Transmission Providers, all transmission owning members of ISOs and RTOs and, through the retention of the reciprocity language in the Order 888 pro forma OATT, also applies to non jurisdictional transmission providers (including those located in foreign countries) that take advantage of open access due to improved planning.

The New Brunswick System Operator has undertaken actions to implement a planning process that is compatible with the FERC Orders for two reasons:

1. A coordinated, open and transparent process could contribute to the mandate of NBSO to facilitate a competitive market.
2. Meeting FERC reciprocity requirements would mitigate the potential risk of being denied access to the New England market for New Brunswick market participants.

In its tariff filing in Phase 2 of the R-3669-2008 hearing process Hydro-Québec has not made any changes to its transmission planning process to make it compatible with the intent or requirements of the FERC Orders. Such action places a risk on HQ Energy Services (US) Inc. ("HQUS") and the marketing departments of HQD and HQP that they could be denied transmission access to adjacent markets on the grounds of failing to meet reciprocity obligations in the HQT OATT.

Supprimé :

Documentation of the approach taken by NBSO is provided in this report for consideration by the Régie. It is an example of the kind of planning process that could be implemented in Québec in order to preserve market opportunities for Hydro-Québec Affiliates and other potential marketers in Québec.

Supprimé :

4.2 Planning Process Requirements

In Order 888 FERC set certain minimum requirements for transmission system planning. In Order 888-A FERC encouraged utilities to engage in joint planning with other utilities and customers. They also required that new facilities be constructed to meet the service requests of long-term firm point-to-point customers and that Good Utility Practice be applied to determine the need for and design of new facilities. However, specific requirements for coordination with customers and neighbors were not included.

FERC is concerned in Order 890 paragraph 423 about the "economic self interest of transmission monopolists" who "naturally wish to maximize their profit." These 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." These incentives may cause a utility "to refuse to deliver energy produced by competitors or to deliver it on terms and conditions less favorable than those they apply to their own transmissions."

FERC note that the pre Order 890 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." (Order 890 P. 424)

Also, transmission providers may develop transmission plans with limited or no input from customers or other stakeholders. FERC expresses its view in Order 890 at Paragraph 425 that "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."

To remedy this situation FERC issued Order 890 setting out the principles for a coordinated, open and transparent transmission planning process that needed to be detailed in an attachment to the Transmission Provider's OATT. This became Attachment K in the pro forma OATT and as stated at paragraph 602 "the transmission planning attachment to a transmission provider's OATT must include sufficient detail to enable transmission customers to understand the transmission provider's planning process. This new attachment must therefore include:

- 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."*

Many details in Order 890 were challenged by interveners for rehearing and clarification. Subsequently, Order 890-A was issued and it re-iterated the need for the planning process, the requirement for Attachment K to explain the process and the principles to be followed in a transmission planning process.

"The Commission affirms the decision in Order No. 890 to amend the pro forma OATT to require coordinated, open and transparent transmission planning on both a local and regional level. Although the Commission encouraged utilities to engage in joint planning in Order No. 888-A, it placed no affirmative obligation on transmission providers to coordinate with their customers in transmission planning or otherwise publish the criteria, assumptions, or data underlying their transmission plans, nor were transmission providers required to coordinate planning activities with other transmission providers in their region. This lack of clear criteria regarding planning obligations has created opportunities for undue discrimination by transmission monopolists with an incentive to deny transmission or offer transmission on an inferior basis." (Order 890-A Paragraph 171)

And at paragraph 181 the Commission *"identified nine planning principles in Order No. 890 that must be satisfied for a transmission provider's planning process to be considered compliant with that order. These nine planning principles are:*

- (1) *Coordination – the process for consulting with transmission customers and neighboring transmission providers;*
- (2) *Openness – planning meetings must be open to all affected parties;*
- (3) *Transparency – access must be provided to the methodology, criteria, and processes used to develop transmission plans;*
- (4) *Information Exchange – the obligations of and methods for customers to submit data to transmission providers must be described;*
- (5) *Comparability – transmission plans must meet the specific service requests of transmission customers and otherwise treat similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning;*
- (6) *Dispute Resolution – an alternative dispute resolution process to address both procedural and substantive planning issues must be included;*
- (7) *Regional Participation – there must be a process for coordinating with interconnected systems;*

(8) *Economic Planning Studies* – study procedures must be provided for economic upgrades to address congestion or the integration of new resources, both locally and regionally; and

(9) *Cost Allocation* – a process must be included for allocating costs of new facilities that do not fit under existing rate structures, such as regional projects.”

In addition to issuing the FERC Orders the Commission undertook several activities to assist utilities in the development of their planning processes. FERC staff issued its *White Paper - Order No. 890 Transmission Planning Process* August 2, 2007. Its objective was to assist transmission providers in complying with the planning-related obligations of Order No. 890, and ensure that the planning procedures are developed with customer and stakeholder participation. A series of technical conferences were held in the Fall of 2007 to aid transmission providers in developing tariff language that specifically identifies the rights and obligations of the transmission providers and their customers in the planning process. Following the affirmation of the need for open and transparent planning processes in Orders 890-A and 890-B additional technical conferences to examine Transmission Planning processes under Order 890 were held Sept 3, 2009 in Phoenix, Sept 10, 2009 in Atlanta and Sept 21, 2009 in Philadelphia. All of this eventually led to the issue on June 17, 2010 of a new Notice of Proposed Rulemaking (NOPR) on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities.

FERC is now of the view that transmission planning processes need to be more explicitly defined as stated in its recent NOPR.

“Our intention in this Proposed Rule is not to disrupt the progress that is already being made with respect to transmission planning and investment in transmission infrastructure, but rather to address remaining deficiencies in transmission planning and cost allocation processes so that the transmission grid can better support wholesale power markets and thereby ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential”. (NOPR Paragraph 33)

“Since the issuance of Order No. 890, it has become apparent to the Commission that Order No. 890’s regional participation principle may not be sufficient, in and of itself, to ensure an open, transparent, inclusive, and comprehensive regional transmission planning process. Without such a process, each transmission provider will not have information needed to assess proposed projects and determine which project or group of projects could satisfy local and regional needs more efficiently and cost-effectively. As a result, the rates, terms and conditions of transmission services may not be just and reasonable. For example, greater regional coordination in transmission planning would expand opportunities for transmission providers, their transmission customers, and other stakeholders to identify and implement regional solutions to local and regional needs that are more cost-effective than those proposed in the transmission planning process of individual transmission providers. In addition, more effective regional transmission planning could better facilitate the integration of location-constrained renewable energy resources, which may be needed to fulfill public policy requirements such as the renewable portfolio standards adopted by many states.

Given this concern, we propose to require that each public utility transmission provider participate in a regional transmission planning process that produces a regional

transmission plan and that meets the following transmission planning principles established in Order No. 890: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning studies". (NOPR Paragraphs 49 and 50)

4.3 Hydro-Québec Position on a Planning Process

Supprimé :

The applicant Hydro-Québec as the Transmission Provider (referred to as HQT) discusses the need for a planning process in HQT-1, Document 1 pages 12-16. They acknowledge that an open and transparent planning process, to be documented in an Attachment K in the tariffs of FERC jurisdictional utilities, may be appropriate for American utilities and FERC but "*considère qu'il n'y a pas lieu de joindre un processus de planification en appendice K à ses Tarifs et conditions.*"

Supprimé :

Several Information Requests from different parties were submitted to attempt to gain some understanding as to the rationale for the HQT position and the details of their planning process. Little if any meaningful information that was additional to that supplied in HQT-1, Document 1 pages 12-16 was provided through the responses. Most responses were circular in that they either referred to this section of the evidence or referred to other information requests that referred to the same section of the evidence.

In summary the HQT position regarding the need for an open planning process is that it is not necessary in Québec and an Attachment K is not added to the tariff for the following reasons:

1. The physical situation in Québec is different than in American utilities. The driver behind FERC of increasing congestion and the need for significant new investment does not exist in Québec.
2. The regulatory situation in Québec is different than in the United States. Regulation in the United States is complex with authority split between the states for supply to local loads and FERC for wholesale transmission access. In Québec the Régie can deal with both.
3. There is a process in Québec that achieves the objectives that are sought by the FERC and it is subject to the authority of the Régie.

Following submission of the June 10, 2009 Evidence of this author regarding Attachment K Hydro-Québec engaged Mr. Judah Rose to submit counter evidence in document HQT-12-01. In it and in subsequent responses to information requests (notably B-132 HQT-8 Doc 6-1) Mr Rose supported the position of Hydro-Québec.

Mr. Rose states that FERC introduced Attachment K for two reasons. "The first and primary reason was that 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. The second reason was, in FERC's view, that inadequate planning might facilitate discrimination by transmission providers". He then goes to considerable length to explain that the Québec system has little congestion and that it has planning processes to ensure that this level of adequacy continue. This is generally true. Hydro-Québec does maintain its system well but it is not the primary issue of concern with Attachment K principles. It is the lack of an open

transparent planning process and its ability to discriminate against non-affiliated transmission customers that is the concern of BEMl.

Mr. Rose argues that the current processes in Québec meet or are superior to the Attachment K principles desired by FERC in Order 890. He explains in detail obligations of Hydro-Québec under Section 73 of the Act, regulatory approval processes before the Régie, ERO¹ and NPCC processes and audits, environmental impact assessments, OATT sections dealing with Exploratory Studies and System Impact Studies and finally the Code of Conduct all as processes that are open and transparent and ensure non discriminatory treatment. It is true that these processes have a degree of transparency for projects that have been committed and are seeking approval for construction but they do not meet the principles required by FERC through Attachment K. Each of these processes (or an equivalent) already existed throughout North America since Order 888 and prior to Order 890.

It is worth noting that meeting NERC planning standards is not necessarily sufficient to meet Order 890 requirements. In its White Paper² FERC staff state at page 13

"The Commission also made clear that reliance on existing NERC planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations"

Lack of openness in Hydro-Québec makes its current processes insufficient. The concern of FERC and BEMl is greater transparency and open participation as a partner prior to a decision on a project and not just the ability to intervene before the Régie after it has been planned.

Let us then examine what has been submitted in evidence and in response to the information requests relative to the nine principles set out by FERC. It is not about what formal process existed prior to Order 890 but what processes are lacking in regard to the Attachment K principles.

1. Coordination – There is no mention of any process for consulting with transmission customers and neighboring transmission providers other than through hearings before the Régie or meetings with external transmission providers regarding operations and maintenance as the case may be;
2. Openness – There is no explanation of planning meetings that are open to all affected parties except hearings before the Régie.
3. Transparency – There is some explanation of planning criteria and a cursory explanation of the process used to develop transmission plans in Attachment J of

¹ The reference to ERO means NERC which has been designated by FERC in the US (and several provinces in Canada) as the Electric Reliability Organization

² Staff White Paper, "Order No. 890 Transmission Planning Process", FERC, August 2, 2007

the HQ OATT but no details on methodology and no provision of models and data for review by interested parties is available. As per the quote of the Régie by HQT in footnote 24 of HQT-1 Document 1 at page 15 the Régie supports an open transparent process for supply of the local load and that it be incorporated in the tariff. Such is the case in Part IV.

4. Information Exchange – The obligations of and methods for customers to submit data to transmission providers are not included in the tariff other than as a consequence of a transmission request or a system impact study request;
5. Comparability – HQT note that they have an obligation under the law to supply the local load and that the Distributor (HQD) is the only customer of HQT who serves the local load in the Québec Interconnection. This is not correct and it is misleading regarding the principle of comparability. There is load served in Labrador that is synchronized inside the Québec Interconnection that is not served by HQD. Also there are end use customers inside the municipal utilities that are not served by HQD. HQD may actually serve the total municipal utility loads at this time but they are not local loads. As stated in the Decision D-2002-95, R-3401-98, 2002-04-30 at page 335 the Régie state "*Les clients susceptibles de requérir le service de transport en réseau intégré sont les réseaux municipaux et la Coopérative –de-Saint-Jean-Baptiste-de-Rouville.*" The principal of Comparability requires that customers that are eligible for Network Service are treated equally to HQD as the supplier of local load. For transmission planning these municipal utilities and co-op must be able to interact equally with HQT as does HQD. Similarly, treatment of point-to-point customers must be equivalent to treatment of HQP.

Just as the Régie recognized the value of an open transparent process for supply of local load the comparability principal requires similar treatment for planning to supply other potential transmission customers.

6. Dispute Resolution – HQT have noted that there is a dispute resolution process that was approved by the Régie in its decision D-2002-95. It is not specifically for both procedural and substantive planning issues as required by FERC but would provide a procedure that could be followed prior to the need to lodge a formal complaint before the Régie for resolution. Formal litigation of a dispute before a regulator is possible in every jurisdiction in North America where the Transmission Provider is regulated and its use is to be a last resort.
7. Regional Participation – HQ have coordination agreements with external transmission providers and participate through NPCC in regional reliability studies but the participation is not open to interested parties and is limited to operational reliability issues;
8. Economic Planning Studies – No study procedures for economic upgrades to address congestion or the integration of new resources, both locally and regionally have been provided in the evidence. The only reference is that new investments greater than \$25 million required to meet demand and maintain reliability are, according the law, subject to approval by the Régie. Also the Régie has required the policy for network upgrades (Attachment J) to be included in the tariff.
9. Cost Allocation – Attachment J provides details on cost allocation for all different types of network upgrades. While it applies cost allocation principles that are not

consistent with accepted industry standards it does lay out the method of cost allocation in a transparent manner.

Thus, as mentioned above, HQT's current planning process does not meet many of the principles set out by FERC. This may have potential consequences through the reciprocity provisions of the pro forma tariff as is discussed in the next section.

4.4 Reciprocity Provisions of FERC Orders

Utilities in the United States that are governed under the Federal Power Act (FPA) are subject to FERC regulatory authority under sections 205 and 206 of the FPA and are referred to by FERC as public utilities. Non-public utilities are defined by footnote 111 of Order 890 as entities that "are not FPA public utilities and therefore are not subject to the Commission's jurisdiction under sections 205 and 206 of the FPA." These are sometimes also referred to as "non-jurisdictional utilities" and include foreign transmission providers as well as US non-public utilities such as federal power authorities and electric cooperatives.

"In Order No. 888, the Commission conditioned non-public utilities' use of public utility open access services on an agreement to offer comparable transmission services in return. The Commission found that, while it did not have the authority to require non-public utilities to make their systems generally available, it did have the ability and the obligation to ensure that open access transmission is as widely available as possible and that Order No. 888 did not result in a competitive disadvantage to public utilities." (Order 890 Paragraph 162)

"Under the reciprocity provision in section 6 of the pro forma OATT, if a public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. Under the pro forma OATT, a public utility may refuse to provide open access transmission service to a non-public utility if the non-public utility refuses to reciprocate." (Order 890 Paragraph 163)

"The NOPR proposed to retain the existing reciprocity policy as applied to foreign utilities doing business in the United States, which we adopted pursuant to sections 205 and 206 of the FPA. By maintaining the same reciprocity requirement for these foreign utilities as for domestic, non-public utilities, the Commission stated that it would ensure that foreign entities will continue to be treated no less favorably than domestic, non-public utilities." (Order 890 paragraph 167)

In Order 890 at paragraph 190 the Commission "retains the reciprocity language in the Order No. 888 pro forma OATT, but updates it to include references to ISOs and RTOs, as suggested by EEI. We also modify the reciprocity provision to provide that, if an ISO or RTO is the transmission provider, the reciprocity obligation is owed to all members of that ISO or RTO."

At paragraph 191 Order 890 states "We will also retain Order No. 888's three alternative provisions for satisfying the reciprocity condition, i.e.: a non-public utility that owns, controls, or operates transmission and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement, seek a waiver of the OATT reciprocity condition from the public utility, or file a safe harbor tariff with the Commission. Thus, for non-public utilities that choose to use the safe harbor tariff, its provisions must be substantially conforming or superior to the revised pro forma OATT in this Final Rule. A non-public utility that already has a safe harbor tariff must amend its tariff so that its provisions substantially conform or are superior to the revised pro forma OATT if it wishes to continue to qualify for safe harbor treatment. As the Commission stated in Order No. 888-A, a non-public utility may limit the use of its voluntarily offered safe harbor reciprocity tariff only to those transmission providers from whom the non-public utility obtains open access service, as long as the tariff otherwise substantially conforms to the pro forma OATT. **We reiterate that these reciprocity requirements apply equally to all non-public utility transmission providers, including those located in foreign countries.**" The bold underline was added for emphasis.

The key points in paragraph 191 are that reciprocity is required and that a foreign transmission provider (like HQT and NBSO) only meets the reciprocity requirement when its tariff has provisions that "**substantially conform or are superior to the revised pro forma OATT**". The bold underline was added for emphasis.

At paragraph 441 of Order 890 the Commission stated that it "also expects all non-public utility transmission providers to participate in the planning processes required by this Final Rule" and "that reciprocity dictates that non-public utility transmission providers that take advantage of open access due to improved planning should be subject to the same requirements as jurisdictional transmission providers." Although not stated explicitly here in paragraph 441, the clear reference in the last line of paragraph 191 indicates that the expectation in paragraph 141 also includes foreign non jurisdictional transmission providers like HQT and NBSO.

In Order 890-A at paragraph 214 the Commission states "With regard to non-public utility transmission providers, we reiterate our expectation of participation in the planning processes established pursuant to Order No. 890 consistent with their reciprocity obligations. Reciprocity dictates that non-public utility transmission providers that take advantage of open access due to improved planning should be subject to the same requirements as jurisdictional providers. **A non-public utility transmission provider with reciprocity obligations that declines to adopt a planning process that complies with Order No. 890 therefore may not be considered to be providing reciprocal transmission service and may be at risk of being denied open access transmission services by a public utility transmission provider.**" The bold underline was added for emphasis.

Finally in its June 2010 NOPR, FERC reiterates the need for non-jurisdictional utilities to comply with the transmission planning principles to meet the reciprocity requirement.

"Reciprocity dictates that non-public utility transmission providers that take advantage of open access, including improved regional transmission planning and cost allocation, should be subject to the same requirements as public utility transmission providers".
(NOPR Paragraph 43)

"The Commission proposes that transmission providers that are not public utilities would have to adopt the requirements of this Proposed Rule as a condition of

maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888". (NOPR Paragraph 181)

In summary, the position of FERC is that provision of, and participation in, a coordinated, open and transparent planning process, which meets the principles and objectives outlined in Attachment K of the pro forma OATT, is a reciprocal requirement of all non-jurisdictional transmission providers. If no such planning process is implemented then Affiliates and Market Participants of HQT run the risk of being denied open transmission access to United States markets and also potentially to Canadian markets in Ontario and New Brunswick.

The issue of reciprocity was raised by several interveners through information requests. In general the responses of HQT were as follows:

1. HQT does not do business in the United States and is not subject to the Federal Power Act or FERC jurisdiction.
2. HQT is subject to regulation by the Régie only and has never attempted to have its tariff recognized as reciprocal to the pro forma through any of the methods available.
3. HQT is not aware of any actions taken by its Affiliates (HQP, HQUS or HQD) to have the tariff recognized as reciprocal to the pro forma.
4. The situation in Québec does not require Attachment K and its absence has no effect on the requirements for reciprocity.
5. HQT does not consider itself a Non Public Utility under the FERC Orders.
6. The issue of reciprocity is outside the scope of this Phase 2 hearing.

Supprimé : The writer disagrees with the position of HQT for two main reasons.fj

In addition Mr. Rose supported this position of Hydro-Québec. In his evidence and in response to information requests he stated several times "It is my understanding that Attachment K transmission planning is not part of the reciprocity requirements for non-jurisdictional utilities not owning transmission assets in the U.S." This understanding is incorrect as FERC clearly states in the paragraphs quoted above that reciprocity includes a planning process that meets Attachment K principles and that it applies to all non-jurisdictional utilities including those in foreign countries. This includes Hydro-Québec.

There are other reasons for disagreement with the position of HQT.

Firstly, in the eyes of FERC and other external entities such as NBSO, the Transmission Provider is not just HQT. It is the complete integrated utility Hydro-Québec. In its Decision D-2002-95, R-3401-98, 2002-04-30 at page 335 The Régie recognizes Hydro-Québec as an integrated utility "La Régie est convaincue par la preuve au dossier, et plus particulièrement par le fait qu'Hydro-Québec est une entreprise intégrée, qu'il ne lui est pas nécessaire de signer une convention de service de transport en réseau intégré pour desservir la charge locale." Given that it is an integrated utility to supply local load in Québec it is also an integrated utility that has a responsibility to deal with the reciprocity issue. It is not acceptable for HQT to hide behind its role as the Québec "Transporteur". It has a duty to represent Hydro-Québec the integrated utility in providing open non-discriminatory transmission access

Supprimé :

Supprimé :

Supprimé :

under comparable terms in order to preserve the reciprocity rights of Hydro-Québec and its US affiliate HQUS.

Supprimé :

Secondly, the argument of HQT focuses on the driver behind FERC's requirement for a coordinated, open and transparent planning process as a fix for the physical ills of congestion and the need for new investments. They completely ignore the concept of providing reciprocal and comparable open access to all customers. The size and the number of the customers is not the issue. It is the principles by which they are served that are important. By having HQUS participate in open transparent planning processes in New England and New York and not providing a reciprocal process in Québec is a complete violation of the intention and purpose of the reciprocity requirements in the pro forma.

4.5 NBSO Planning Process

Under the Electricity Act in New Brunswick NBSO is "to undertake and coordinate power system planning and development responsibilities to maintain and ensure the adequacy and reliability of the integrated electricity system for present and future needs and for the efficient operation of a competitive market."³ The means by which this object is carried out are specified in the NB Market Rules and Procedures.

NBSO is in the process of updating those Rules and Procedures and documenting its planning process in a coordinated, open and transparent manner such that it is compatible with the intent and reciprocity requirements of Orders 890, 890-A, 890-B, 890-C and 890-D. A series of meetings has been held with in province transmission owners, Maritimes Area Transmission Providers and neighboring control area operators. Draft documents have been prepared to explain the process and its relationship to the NB OATT, Market Rules and Market Procedures.

Supprimé : and

A workshop open to transmission customers, neighboring utilities, regulators, and interested parties was held June 24, 2009 to discuss the process, review the documents and solicit input. It was the intent of NBSO to finalize the process and the documents following the workshop, and to present them for approval to the NBSO board of directors and the NB Energy and Utilities Board as required. Late in the summer it became apparent to NBSO that the Québec and New Brunswick governments were negotiating arrangements under which power system assets in New Brunswick would be taken over by Hydro-Québec. Given the uncertainty regarding the future of NBSO work on the planning process was stalled.

Supprimé : has been scheduled for

Supprimé : is

After the Hydro-Québec-NB Power deal was terminated in late March 2010 work on the planning process was reinitiated. Draft changes to Chapter 9 of the Market Rules were posted in June 2010 and comments of stakeholders were reviewed at the August 24, 2010 Market Advisory Committee meeting. A final draft incorporating the comments plus revisions to different Market Procedures was posted again in early September and is to go to the NBSO Board for approval along with changes to affected Market Procedures. The NBSO Transmission Planning Process including affected Market Rules and Procedures is documented in Appendix 2.

³ New Brunswick Electricity Act, s. 42 Object of the NBSO, ss. (i).

A number of changes to the NB Open Access Transmission Tariff which will make it compatible with the intent and direction of Order 890 are also proposed. These were initially addressed through a Technical Conference on September 9, 2010 and NBSO is scheduled to file a tariff application with the NB Energy and Utilities Board on October 18, 2010. The notice indicating the intent of the Technical Conference with the POWERPOINT presentation explaining the proposed tariff changes to be addressed are attached as Appendix 3.

4.6 Planning Processes of Other Non Public Utilities

In addition to NBSO there are a number of non public utilities that either have or are in the process of taking actions to prepare planning processes that meet the requirements of FERC and document them through an Attachment K to their transmission tariffs. Included are the US federal power authorities Tennessee Valley Authority and Bonneville Power Administration plus the Canadian utility British Columbia Transmission Corporation. We refer you to the following respective sites for more information on Attachment K filings or drafts or Order 890 updates..

Tennessee Valley Authority - Draft Attachment K posted for comment
<http://www.oatioasis.com/tva/tvadocs/TVAK.pdf>

Bonneville Power Administration - Attachment K transmission Planning Process has been updated August 6, 2010 and is available at pages 155 through 190E of the posted OATT at the site below
http://www.transmission.bpa.gov/Business/ts_tariff/documents/bpa_oatt_08052010.pdf

British Columbia Transmission Corporation- Approved OATT including Attachment K
http://transmission.bchydro.com/regulatory_filings/tariff/tariff_documents/open_access_tariff.htm

Supprimé : The agenda of the workshop and some of the documents to be considered are attached as appendices to this testimony. Details on the workshop and registration forms can be obtained at the Public and Media section of the NBSO web site www.nbso.ca. Presentations (and possibly other documents) are to be made available at or following the workshop.¶

Mise en forme : Puces et numéros

Supprimé : http://www.tva.com/pow-er/pdf/2008/FERC_Order890_OConn-or.pdf

Supprimé : http://www.transmission.bpa.gov/Business/Rates_and_Tariff/order890.cfm

Code de champ modifié

Supprimé : <http://www.bctc.com/NR/rdonlyres/96BA914C-7482-4EED-B339-42131B59C9AF/0/SignedAttachmentK.pdf>

5. CONCLUSION

This report has reviewed two areas where HQT has deviated from the FERC pro forma tariff wording.

Concerning the issue of "Transmission Service Subject to Re-dispatch or Conditional Curtailment" HQT has injected a requirement for a "*written request*" in Section 15.4 that is redundant and could delay provision of service. HQT has also altered its due diligence obligation in that section to include redispach "*from resources in the Transmission Provider's Control Area*" instead of only from "*its own resources*". This change puts an obligation on HQT to take commercial actions in the marketplace that could introduce undue discrimination.

Concerning the issue of "*Requirements for a Coordinated, Open and Transparent Transmission Planning Process*" it has been shown that while HQT has not documented such a process in an Attachment K to its tariff other non-public utilities have. This lack of HQT to document its process and open its participation to interested parties constitutes a failure to meet the reciprocity requirements of the pro forma tariff.

Appendix 1

STAKEHOLDER WORKSHOP Transmission Planning in New Brunswick Preliminary Agenda June 24, 2009

- 8:00 a.m. Registration and Refreshments
- 8:30 a.m. Welcome and Opening Remarks
(Alden Briggs, Director, Power System Engineering, NBSO)
- Relationship with Reliability Entities: FERC, NERC, & NPCC
 - Planning Responsibilities
 - Planning Coordination
 - Types of Planning Studies
 - Exciting Times: Future Transmission Requirements to Accommodate Major Energy Development
- 10:00 a.m. Nutrition Break
- 10:15 a.m. New Brunswick Transmission System Needs Analysis and Proposed Solutions
(Pat Masterson, Transmission Planning Engineer, NB Power)
(Ann Evans, Strategic Planning, NB Power)
- Meeting NPCC Design Criteria
 - Overview of the New Brunswick System
 - Methodology for Identifying System Needs
 - Proposed Solutions
- 11:30 a.m. Transmission Planning and the OATT
(George Porter, Director, Market Development & Settlement, NBSO)
- 12:00 p.m. Lunch
- 1:00 p.m. NBSO 10-Year Assessment of the Adequacy of Generation and Transmission Facilities in New Brunswick (2009 to 2019)
(Scott Brown, Senior Engineer, NBSO)
- 1:45 p.m. Market Procedure MP-21, Connection Assessments
(Scott Brown)
- 2:15 p.m. Nutrition Break
- 2:30 p.m. Stakeholder Involvement
(Carl Gautreau, Technical Writer, NBSO)
- Role of the Planning Advisory Committee
 - Stakeholder proposals to address System Adequacy and Congestion Issues
- 3:15 p.m. Open Discussion and Wrap-Up
(Alden Briggs).

Appendix 2

NBSO Transmission Planning Process

NBSO Transmission Planning Methodologies and Governance (NBSO-TPR-001.0)

Overview

The overall NBSO Planning Process is set out in this document along with the general means by which it is to be coordinated, open and transparent. It overviews the roles and responsibilities of the various parties, the studies and reviews to be undertaken, the need for transmission planning performance requirements, the formation and governance of a Planning Advisory Committee (PAC), the means by which NBSO will coordinate its activities through the Maritimes Area Technical Planning Committee and NPCC, and the guidelines for information disclosure and confidentiality. It is a framework document that references specific sections of the Market Rules, specific Market Procedures and other documents that provide greater details to support the planning process.

This document is attached as Appendix 2A. Explanations Chapter 9 of the Market Rules and of two supplementary documents follow that are also attached as Appendices 2B and 2C.

NB Market Rules – Chapter 9

Mis en forme : Non Surlignage

The Market Rules were originated in 2004 when NBSO was formed and are now being revised to more fully comply with Order 890 principles. The currently proposed changes to Chapter 9 are attached as Appendix 2D. These include consideration of suggested changes received from Market Participants presented at a Market Advisory Committee meeting August 24, 2010. Chapter 9 sets out the NBSO responsibilities for Integrated Electricity System Planning and governs in particular the planning for transmission system investment including alleviation of transmission constraints which is covered in Section 9.4.

The planning process requires that a Baseline Plan be developed each year and communicated publicly. This is done through the annual 10 Year Outlook document⁴ which, in addition to identifying all projects considered in the Baseline Plan, it details the methodology by which these projects have been determined and the data assumptions applied in the analysis. The Executive Summary of the 10 Year Outlook for 2010 is attached as Appendix 2E. The obligations of Market Participants and Transmitters to provide data for the analysis is set out in Market Procedure MP-10 Information Required for Forecast and Assessments. The 10 year Outlook is supported by the document NBSO Transmission Planning Performance Requirements (NBSO-TPR-001.1) which is explained in more detail below.

If there are alternative projects proposed to meet system requirements identified in the Baseline Plan NBSO will go to an RFP process to enable different Transmitters or Market Participants to submit projects for consideration. This RFP process is governed by Market Procedure MP-22 Proposals to Address System Adequacy. Before a desired project can proceed its impact on the system is analysed in detail as specified in Market Procedure MP-21 Connection Assessments which applies for new or modified facilities.

⁴ NBSO 10-Year Assessment of Adequacy of Generation and Transmission Facilities in New Brunswick 2010-2020, July 2010,

To insure that the Transmission Planning process is open and transparent, NBSO facilitates Transmission Planning Meetings that are open to all Market Participants, Transmission Customers and other interested parties, including, but not limited to electric utility regulatory agencies. These meetings are referred to as Planning Advisory Committee Meetings (PAC) and the details governing this stakeholder consultation process is to be specified in Market Procedure MP-25 which is currently under development. It will also set out the guidelines for information disclosure and confidentiality.

The means by which NBSO coordinates its regional and NPCC activities is set out in the document Maritimes Area Technical Planning Committee (NBSO-TPR-001.2). It overviews the Maritimes Area, its component entities and their NPCC participation, outlines the formation of the Maritimes Area Technical Planning Committee (MAPTC), and defines the role of MAPTC for coordination of plans, reviews and studies. This document is attached as Appendix 2C.

**NBSO Transmission Planning Performance Requirements –
(NBSO-TPR-001.1)**

This document itemizes the reliability standards adopted as appropriate for the New Brunswick bulk power system and notes that they are consistent with those established by the Northeast Power Coordinating Council (NPCC) for the "Basic Criteria for Design and Operation of Interconnected Power Systems" and "Bulk Power System Protection Criteria". They also comply with North American Electricity Reliability Corporation (NERC) Transmission Planning Standards. The purpose of these New Brunswick Reliability Standards is to assure the reliability and efficiency of the New Brunswick bulk power supply system through coordination of system planning, design and operation. These standards apply to all entities comprising or using the New Brunswick bulk power supply system. By entering into connection Agreements (Attachment J of the NBSO Tariff) and implementing NBSO Market Rules Chapter 4 Technical and Connection requirements ensures facilities that are connected to the Transmission System must also comply with NERC and NPCC criteria, guides, requirements, and standards. These Reliability Standards are intended to be used for planning and design of the New Brunswick bulk power system. Reliability criteria and procedures for operations are developed and maintained by the NBSO. This document is attached as Appendix 2B.

**Maritimes Area Technical Planning Committee
(NBSO-TPR-001.2)**

This document overviews the Maritimes Area, its component entities and their NPCC participation, outlines the formation of the Maritimes Area Technical Planning Committee (MAPTC), and defines the role of MAPTC for coordination of plans, reviews and studies. This document is attached as Appendix 2C.

Reference Documents

Other reference documents that play a role in the Planning Process are not attached but are listed below along with a web address at which they can be accessed.

The New Brunswick Electricity Act (Part III)

<http://www.qnb.ca/0062/acts/acts/e-04-6.htm>

NBSO Market Rules:

Chapter 5 (System Reliability) and Chapter 9 (Transmission System Planning, Investment and Operations)

<http://www.nbso.ca/Public/en/docs-EN/MarketRules/ElectricityMarketRules-e.pdf>

NBSO Market Procedures

MP-10 (Information Required for Forecast and Assessments)

<http://www.nbso.ca/Public/private/MP-10.pdf>

MP-21 (Connection Assessments)

<http://www.nbso.ca/Public/private/MP-21.pdf>

MP-22 (Procedures to Address System Adequacy Issues)

All available at: <http://www.nbso.ca/Public/en/op/market/procedures/default.aspx>

MP-25 ((Stakeholder Consultation Process) - Not yet poste

Supprimé : Not yet posted

Code de champ modifié

ATTACHMENTS:

**Appendix 2A: NBSO Transmission Planning Methodologies and Governance
(NBSO-TPR-001.0)**

**Appendix 2B: NBSO Transmission Planning Performance Requirements -
(NBSO-TPR-001.1)**

Appendix 2C: Maritimes Area Technical Planning Committee (NBSO-TPR-001.2)

**Appendix 2D: Notice of Proposed Amendment to the Market Rules
(Re Transmission Planning Process)**

Appendix 2E: Executive Summary – NBSO 10 Year Outlook

QUÉBEC

RÉGIE DE L'ÉNERGIE

R-3669-2008
Phase 2

HYDRO-QUÉBEC, when carrying on
electric transmission activities

and

Intervenors

EXPERT REPORT
OF
CRAIG R. ROACH, Ph.D.

ON BEHALF OF
ÉNERGIE BROOKFIELD MARKETING INC.

SEPTEMBER 28, 2010

BOSTON PACIFIC COMPANY, INC.

The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation and to build on transmission planning efforts and processes already underway in many regions of the country. However, although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission.⁵²

101. Indeed, demonstrating that the proposed or existing transmission planning process addresses the nine principles is the central requirement for Attachment K.⁵³ As summarized in the *pro forma* OATT the nine principles are coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new projects.

3. Substantial conformance with or superiority to the *pro forma*

102. Mr. Rose's third argument appears to be that the existing HQT planning process is comparable to that reflected in the Attachment K in the *pro forma* OATT.⁵⁴ In the first of two overall conclusions in his most recent filing Mr. Rose stated:

TransEnergie is offering open, transparent and coordinated transmission planning and it needs [sic] not modify its existing planning process in order to offer open and comparable access to its transmission system.⁵⁵

⁵² FERC Order, *Order on Compliance Filings and Petition for Declaratory Order*, Docket Nos. NJ08-5-000, OA08-25-000, and OA08-26-000, July 17, 2008 at ¶3.

⁵³ FERC, *Pro Forma Open Access Transmission Tariff* at Attachment K Transmission Planning Process, ¶2.

⁵⁴ *Rose Supplement* at ¶87 and 95.

⁵⁵ *Ibid.*, at ¶95.

103. I agree that this could be the right line of argument – Mr. Rose and HQT should have an Attachment K which substantially conforms to or is superior to that in the *pro forma* OATT.⁵⁶ Obviously, to meet this FERC standard, HQT would first have to have a written Attachment K rather than a blank page. And what would need to be written in HQT’s Attachment K would be a compelling argument that HQT’s planning process addresses all nine of the principles the FERC set in the 890 Orders for a utility’s transmission planning.⁵⁷

104. Mr. Rose was asked by at least two Intervenors to state how the HQT process was substantially conforming or superior.⁵⁸ Unfortunately, he did not answer the question directly – that is, he did not address each of the nine principles in full in a manner the FERC would require. Rather he references other sections of his testimony which mention a wide range of HQT activities. For example, when addressing two core principles – Openness and Transparency – Mr. Rose refers back to his previous answers in ¶29 to ¶70 – this is his primary reference for Openness and his sole reference for Transparency.⁵⁹

⁵⁶ *Order No. 890* at ¶437. In *Order 890* at ¶191, FERC gives three options for meeting the reciprocity requirement, “We will also retain *Order No. 888*’s three alternative provisions for satisfying the reciprocity condition, i.e.: a non-public utility that owns, controls, or operates transmission and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement, seek a waiver of the OATT reciprocity condition from the public utility, or file a safe harbor tariff with the Commission. Thus, for non-public utilities that choose to use the safe harbor tariff, its provisions must be substantially conforming or superior to the revised *pro forma* OATT in this Final Rule.”

⁵⁷ *Ibid.*, at ¶444.

⁵⁸ *Rose Supplement* at ¶89 and HQT’s Response to EBMI’s Information Requests, August 20, 2010 at response to information request 8.3.

⁵⁹ *Rose Supplement* at ¶89.

While the activities described in these references surely have merit, Mr. Rose's reference to them is not sufficient to show a conformance with the FERC's requirements for Attachment K.

105. Moreover, a quick reading of those references reveals a fundamental deficiency – for the most part Mr. Rose is saying that stakeholders must litigate to participate in HQT's transmission planning process. This can be seen in Mr. Rose's discussion (§29-41) of two of the key ways customers and stakeholders are permitted to participate in HQT's transmission planning process – through the Régie's review process for new transmission projects (under Section 73 of the Act) and through HQT's periodic Rate Cases. In discussing participation in the Section 73 process, Mr. Rose states:

This process is separate from, and supplemental to tariff cases. It is a review that is open to interested persons and that allows intervenors from both inside and outside Quebec with interests in TransEnergie transmission investment. This process provided by law allows for examination of witnesses. The process is subject to public notice. Transmission investments and plans are subject to challenge by intervenors.⁶⁰

106. And, in discussing the Rate Case process, Mr. Rose states:

This process is also an open process subject to public notice. Parties may intervene in this process in a manner similar to the authorization process under Section 73 and challenge recovery of transmission investments and operation and maintenance costs providing an additional avenue for input to the process. Intervenors can request additional information and

⁶⁰ Ibid., at ¶31.

documents explaining TransEnergie's plans via request for information and questions to witnesses.⁶¹

107. These excerpts alone indicate litigation is the primary opportunity Mr. Rose sees for stakeholder participation.

108. Litigation is not what the FERC had in mind when it required that the Attachment K planning process must allow for the timely and meaningful input by any and all stakeholders; and the word 'timely' clearly means prior to HQT's final decision on which transmission investment it wants to pursue. As already quoted above, the FERC stated:

We reiterate, however, that the planning process must provide for the timely and meaningful input and participation of all interested customers and other stakeholders in the development of transmission plans. Customers and other stakeholders therefore must have the opportunity to participate at the early stages of the development of the transmission plan, rather than merely given an opportunity to comment on transmission plans that were developed in the first instance without their input.⁶²

109. FERC made it clear that one of the primary reforms in the 890 Orders was to assure customers and other stakeholders were able to participate in the transmission planning process. The FERC stated:

In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be

⁶¹ *Ibid.*, at ¶39.

⁶² *Order No. 890-A* at ¶188.

treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop transmission planning processes that satisfy nine principles (discussed below) and to clearly describe those processes in a new attachment (Attachment K) to their tariffs.⁶³

110. To better define what the FERC meant by stakeholder participation, let's use the FERC Order already cited above approving Big Rivers' Attachment K, with conditions. In the Order, the FERC went through each of the nine principles judging whether Big Rivers met the requirement, and from this discussion, it is clear that stakeholder participation is central to meeting many of these nine principles.

111. The first requirement is for coordination and the FERC stated that "In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process."⁶⁴ Beyond regular meetings with the large distribution cooperatives, Big Rivers noted that it had formed a "Regional Stakeholder Group" in conjunction with some neighboring public power companies.⁶⁵

The Regional Stakeholder Group is open to all transmission customers, including full service distribution and industrial customers, neighboring utilities and Regional Transmission Organizations (RTOs), regulatory agencies, and generation owner/development companies. An annual cycle of Regional Stakeholder Group meetings is scheduled on a recurring basis to provide stakeholders with opportunities for participation and contributions, including alternative solutions.⁶⁶

⁶³ *Big Rivers* at ¶40.

⁶⁴ *Ibid.*, at ¶44.

⁶⁵ *Ibid.*, at ¶45.

⁶⁶ *Ibid.*, at ¶45.

112. The FERC then turned to the second principle – Openness. Again, stakeholder participation is central to compliance. The FERC stated “The openness principle requires that transmission planning meetings be open to all affected parties, including, but not limited to, all transmission and interconnection customers, state authorities, and other stakeholders.”⁶⁷ To show compliance, Big Rivers pointed once again to its Regional Stakeholder Group.⁶⁸

113. The FERC then turned to the third principle – Transparency. In its discussion the FERC stated that “each transmission provider must describe in its planning process the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.”⁶⁹ The FERC went on to say that “sufficient information should be made available to enable customers, other stakeholders, and independent third parties 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.”⁷⁰

114. I will turn to one more of the nine principles in the Big Rivers Order – Economic Planning Studies. Here again, the crucial role of stakeholder

⁶⁷ Ibid., at ¶49.

⁶⁸ Ibid., at ¶50.

⁶⁹ Ibid., at ¶60.

⁷⁰ Ibid., at ¶61.

participation is made clear. The FERC found that Big Rivers' Attachment K partially satisfied this principle. FERC noted in particular that "Stakeholders may request that Big Rivers perform economic planning studies related to congestion or the integration of new resources on its system."⁷¹

115. The point is that, by referencing to opportunities to litigate, Mr. Rose fails to show the existing HQT planning process provides the kind of opportunity for timely and meaningful stakeholder participation which the FERC would require in Attachment K. With this failure alone, and putting aside other possible deficiencies, Mr. Rose has failed to show that the HQT transmission planning process substantially conforms with or is superior to the Attachment K of the *pro forma* OATT formed by the 890 Orders.

4. Attachment K as protection against undue discrimination

116. I noted above that Mr. Rose defined two motives for the FERC requiring Attachment K – the first was physical problems like congestion. The second motivation according to Mr. Rose is that FERC was worried about discrimination by transmission providers (such as HQT) against competitors. Mr. Rose stated:

Second, FERC was concerned that U.S. transmission providers would use transmission planning to discriminate against unaffiliated companies. One consequence of the discrimination would be lack of transmission and the

⁷¹ Ibid., at ¶93.

other problems identified above. Another consequence would be higher prices for power.⁷²

117. Mr. Rose is correct that concerns about undue discrimination were a motivation for the FERC to require Attachment K. That is, a coordinated, open, and transparent transmission planning process is protection from HQT favoring its generation and marketing affiliates through its transmission plan. That favoritism could take the form of HQT planning transmission expansions only to accommodate resources its affiliates control. Enabling customers and stakeholders to get in the early stages of planning and to have full access to inputs and methods is one way to combat favoritism; this is why the FERC promotes stakeholder participation through Attachment K.

118. The concern with favoritism is that it can lead to higher than necessary costs to ratepayers in both Québec and in the U.S. For this reason, I would suggest that requiring an Attachment K serves two goals: one, get the best rates possible for the people of Québec and two, assure robust power exports by assuring the best rate possible for U.S. ratepayers.

119. This ends my Report.

⁷² *Rose Rebuttal* at page 8 lines 1-5.

I have signed this report on September 28, 2010.

Craig R. Roach

Craig R. Roach

RÉGIE DE L'ÉNERGIE

DOSSIER : R-3669-2008, PHASE 2

**RÉPONSES D'ÉNERGIE BROOKFIELD MARKETING INC. (« EBMI »)
À LA DEMANDE DE RENSEIGNEMENTS N° 1
DU TRANSPORTEUR**

**RÉPONSES DE EBMI À LA DEMANDE DE RENSEIGNEMENTS N° 1 DU TRANSPORTEUR RELATIVE À
LA DEMANDE DE MODIFICATION DES TARIFS ET CONDITIONS DES SERVICES DE TRANSPORT
D'HYDRO-QUÉBEC À COMPTER DU 1^{ER} JANVIER 2009 - PHASE 2**

Veillez prendre note que nous avons fait traduire les questions pour permettre à nos experts d'y répondre. Nous ajoutons la version traduite à la suite des questions.

PARTIE 1

**Revised Evidence of William K. Marshall
28 septembre 2010**

1. Référence : Revised evidence of William K. Marshall

Demandes :

I.1 Est-ce que vos services ont déjà été retenus relativement à l'Ordonnance 890 de la FERC? / *Have your services already been retained with regard to FERC Order 890?*

R 1.1 : None of my previous engagements have been solely focused on FERC Order 890. Rather they have been more general in nature yet the majority include aspects of transmission tariffs, market access, transmission planning, usage of transmission systems and related regulatory issues so indirectly they may include FERC Order 890 issues. See specific list of clients and mandates in the response to Question 1.2 below. I also am including my updated resume.

I.2 Si oui, fournir la liste de ces mandats et leur objet. / *If yes, provide the list of these mandates and their purpose.*

R 1.2 : Parties with which engagements have been undertaken by WKM Energy Consultants Inc (WKM) are listed below along with specific work mandates:

- **New Brunswick System Operator (July 1, 2008)** – Provide services of Mr. William Marshall to the NBSO for the completion of the hearing process before the NB EUB regarding the 2008 application for changes to the Open Access Transmission Tariff and assist with the transition period associated with appointment of a new President and CEO
- **NB Department of Energy (2008, 2009 & 2010)** – The primary focus of the consulting work through WKM was, and continues to be, to provide energy engineering analysis and advice to DOE related to the following topics:

1. Strategic advice with respect to the New Brunswick electricity sector (including generation, transmission, distribution, tariffs and renewable energy). Advice could involve policy, technical, regulatory, market development, project evaluation and energy hub business development issues.
2. Input and advice with respect to the Pt Lepreau II nuclear project.
3. Input and advice with respect to the Community Energy Program, Renewable Portfolio Program, wind, biomass, cogeneration and other renewable energy deployment strategies.
4. Support for the New Brunswick energy policy renewal process through input, advice, consultation and development of policy discussion materials, papers and presentations.
5. Helping to shape an electricity "vision" for the international northeast region (and New Brunswick's positioning and "value proposition" within the broader regional "vision"). This involved the development of a discussion paper and a presentation as well as input and advice.
6. Helping to establish, leverage and strengthen strategic regional electricity and energy hub relationships, primarily related to electricity transmission and system operations opportunities.
7. Acting as a training, education and mentoring resource to DOE with respect to transmission, electricity and energy hub issues.
8. Other topics by mutual agreement.

In addition to the above mandate I was engaged jointly with William Thompson to review available options regarding the structure of the New Brunswick electricity market and the structure and governance of the NB Power group of companies and to make recommendations to ensure the Province both maintains its momentum toward an electricity market which provides ratepayers with safe, reliable access to the most reasonable cost electricity with minimal risk to ratepayers and taxpayers, and also provides for the future growth and development of New Brunswick as the Energy Hub for the region. This entailed a review of available reports and reviews conducted in New Brunswick and elsewhere concerning the challenges facing the electricity market. It was supplemented by personal interviews with individuals involved in various aspects of the electricity market and companies/organizations that are heavily impacted by the result of changes in the operation of the electricity market. The report on this work "Options for the Electricity Market in New Brunswick and the Impact on New Brunswick Power Group of Companies" (also generally referred to as the Marshall-Thompson Report) is provided in response to Question 1.2.

During the winter of 2010 my engagement with NB DOE focused almost solely on the regulatory and commercial evaluation and implementation of the proposed sale of NB Power to Hydro Quebec. Regulatory issues included market rule changes, tariff impacts and legislative requirements. Commercial issues included supply arrangements, transmission expansion requirements and delivery risks.

- **Integritys Energy Services** (Dec 19, 2008) – Provide power system energy consulting that includes but was not limited to:
 1. Providing advice regarding the Transmission Tariff of its affiliate company WPS Canada Generation Inc.
 2. Identifying and assisting in the acquisition of benefits for Integritys when operating as part of the NB-HQ Radial interconnection.
 3. Identifying and assisting with the issue of Residual Monthly Cost compensation for Transmission usage.
 4. Providing local market intelligence with regard to generation opportunities for investment in renewables.
 5. Assist in recommending an on-going strategy for involvement in Transmission investment in New Brunswick via WPS Canada Generation Inc.

- **MZConsulting Inc for work with Saskatchewan Power Corporation** (March 2009) – Assist SaskPower in preparation of a report to government addressing issues related to the possible introduction of nuclear power in Saskatchewan. MZConsulting was to provide input on industry experience and examples in other jurisdictions, particularly New Brunswick. The purpose of this work was to provide MZConsulting and SaskPower with information about the nuclear industry in the areas of interest; not to provide recommendations going forward. Two distinct areas that were prepared by WKM Energy Consultants for MZConsulting included:
 1. Experience with Introducing Nuclear Power to New Brunswick
 2. Interconnectivity and Transmission Issues

- **PEI Energy Corporation** (Oct. 28, 2009) - Provide consultant services on electrical utility matters on an as needed basis including but not be limited to:
 1. Provide educational seminar regarding tariff and market issues faced by PEI in procurement of new supply contracts
 2. Assist in the procurement and evaluation of new supplies including the costs, risks and issues associated with delivery under multiple transmission tariffs
 3. Advise the Corporation and government on possible restructuring of the PEI utility business

- **Atlantic Canada Opportunities Agency** (2009 & 2010) – Support the Atlantic Energy Gateway Initiative (a \$4 million initiative designed to encourage the development of additional clean and renewable energy supplies in Atlantic Canada and promote these energy sources in new markets). Such support to include provision of expert advice as required on electricity supply and demand issues, environmental policy impacts, renewable energy opportunities, impacts and

consequences of US policy decisions and initiatives, and the nature and impact of federal and provincial government energy and environmental policies on the electricity marketplace, and other duties as necessary.

- **Power Advisory LLC for contract with Ontario Energy Board (Oct 2009)** – Assist the OEB in the development and implementation of Transmission and Distribution planning guidelines and processes including the following:
 1. Facilitate a consultation meeting with electricity transmitters and relevant agencies regarding filing guidelines for transmission plans.
 2. Assist Board staff in developing filing guidelines for transmission system plans.
 3. Facilitate a maximum of 2 consultation meetings with distributors regarding the initial filing guidelines.
 4. Assist Board staff in review of a maximum of 3 distribution system plans filed in the summer/fall 2009.
 5. Assist Board staff in developing the next set of filing guidelines for distribution system plans.

- **Natural Resources Canada (Oct 2, 2010)** - The Atlantic Energy Gateway Initiative requires sharing of knowledge and information through a series of workshops and the commissioning of new studies where knowledge gaps exist. To this end, NRCan requires the expert assistance of a consultant to plan and deliver such workshops, as well as design and oversee the commissioned studies. An extensive background and experience in transmission planning and tariffs, and system operator structures, procedures and business lines is essential. Specific tasks will include:
 1. Provide expert advice to NRCan as required on electricity supply and demand issues, environmental policy impacts, renewable energy opportunities, impacts and consequences of US policy decisions and initiatives, and the nature and impact of federal and provincial government energy and environmental policies on the electricity marketplace;
 2. Engage with stakeholders, in particular, with representatives of the region's utilities, private sector and other vendors, as required;
 3. Provide expert advice and analysis related to the policies and initiatives of the provinces, utilities, and public regulatory bodies;
 4. Provide briefings, presentations and analysis on technical matters of system planning, transmission, and regulatory affairs; and
 5. Assist in the development of reports and communications products

1.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie. / *If written reports or depositions were provided or filed, provide a copy thereof.*

R 1.3 : Under the engagements referenced all written reports, analyses, graphs and presentations were provided in confidence except for evidence filed by the NBSO in its 2008 Transmission Tariff hearing which is available at the following we site:
www.nbso.ca/Public/en/op/regulatory/proceedings.aspx?Year=2008

In April of 2010 the Government released the Marshall Thompson Report to the public and it is included as Appendix 1.

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? / *Have your services already been retained with regard to the transmission installations planning process set out in Attachment K of the FERC pro forma OATT?*

R 2.1 : No, none of my previous engagements have been solely focused on Attachment K of the FERC *pro forma* OATT. Rather they have been more general in nature yet the majority include aspects of transmission planning, usage of transmission systems and related regulatory issues as indicated above.

2.2 Si oui, fournir la liste de ces mandats et leur objet. / *If yes, provide the list of these mandates and their purpose.*

R 2.2 : Please see the response to Question 2.1 and 1.2 above.

2.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie. / *If written reports or depositions were provided or filed, provide a copy thereof.*

R 2.3 : Please see response to Question 2.1 and 1.3 above. Note also the Marshall Thompson Report attached as Appendix I.

3.1 Est-ce que vos services ont déjà été retenus, plus particulièrement relativement à la compensation des écarts de réception et de livraison? / *Have your services already been retained with regard, in particular, to compensation between scheduled and actual delivery?*

R 3.1 : No, none of my previous engagements have been solely focused on compensation between scheduled and actual delivery. Rather they have been more general in nature yet many include usage of transmission systems and the impacts of market access and transmission tariffs including imbalance charges on the delivered value of energy.

3.2 Si oui, fournir la liste de ces mandats et leur objet. / *If yes, provide the list of these mandates and their purpose.*

R 3.2 : Please see response to Question 3.1 and 1.2 above specifically the mandates for NB DOE regarding the proposed sale of NB Power to Hydro Quebec and for PEI Energy Corporation regarding procurement of new supplies. Both involved delivery risks associated with schedule imbalances.

3.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie. / *If written reports or depositions were provided or filed, provide a copy thereof.*

R 3.3 : No public reports relating to delivery compensation. This type of work is almost always confidential..

Référence : Revised evidence of William K. Marshall, page 10 :

« Each of these processes (or an equivalent) already existed throughout North America since Order 888 and prior to Order 890. »

4.1 Fournir la liste précise des processus ou leurs équivalents existant en Amérique du Nord, auxquels vous faites référence. / *Provide the precise list of the processes or their equivalents existing in North America to which you refer.*

R 4.1 : The processes referred to are those noted by Mr. Rose and stated earlier in the paragraph referenced by HQT. They include:

- The regulatory processes (Filings to, hearings by, decisions of, and orders of a regulator) related to transmission tariffs, revenue requirements and investment approvals. In Quebec HQT is subject to these processes before the Regie. In the US Transmission Providers are subject to these processes before FERC and in Canada they are subject to these processes before the applicable provincial regulator, for example OEB in Ontario, EUB in New Brunswick and URB in Nova Scotia. An example of the filing processes applied by FERC is available at www.ferc.gov/help/filing-guide/file-OATT.asp
- The processes regarding information filings, standards development, compliance, functional certification and audits of NERC in its role as the ERO which are set out in hundreds of separate documents available at www.nerc.com. Specific examples of the thousands of processes set out by NERC are found in the Standards Processes Manual available at www.nerc.com/files/Standard_Processes_Manual_Approved2010.pdf

- The processes regarding information filings, criteria compliance, functional performance and audits of NPCC which are set out in various NPCC documents referenced in the 499 page NPCC Reference Manual available at www.npcc.org/viewDoc.aspx?name=Revision+17.pdf&cat=pubRefMan
- The processes set out by provincial, state and federal governments for public consultation and stakeholder review of the environmental impacts of a defined project. Most jurisdictions document such required processes. An example is "*A Guide to Environmental Impact Assessment in New Brunswick*" which is available at www.gnb.ca/0009/0377/0002/07-12-05-e.pdf
- The processes specified in the OATT of a Transmission Provider regarding implementation of open access for Point-to-point and Network Service customers.

The point of my statement was not to argue with these processes as they do contribute to openness and transparency and ensure reliability. My point is that they already existed prior to Order 890 and it is HQT's burden to show that said processes meet or are superior to the Attachment K principles desired by FERC in Order 890.

4.2 Fournir les références et copie des documents à l'appui. / *Provide the references and a copy of the supporting documents.*

R 4.2 : Examples and access web sites are included in the response to Question 4.1.

PARTIE 2

Rapport de Craig R. Roach 28 septembre 2010

Référence : Rapport de Craig R. Roach

Demandes :

5.1 Est-ce que vos services ont déjà été retenus relativement à l'Ordonnance 890 de la FERC? *Have your services already been retained with regard to FERC Order 890?*

R 5.1 : Yes.

5.2 Si oui, fournir la liste de ces mandats et leur objet./ *If yes, provide the list of these mandates and their purpose.*

R 5.2 : I was retained by TransCanada Energy Ltd. to provide Direct and Rebuttal Testimony in a case relating to Order 890 policy issues. I was also retained by Énergie Brookfield Marketing Inc. to provide an Expert Report in a separate case relating to Order 890 policy issues. I focus on these Testimonies because they reveal that very recently I have been accepted as an expert on the issues of the 890 Orders and ATCs at both the Régie and at the British Columbia Utilities Commission.

However, my background with the transmission issues embedded in the 890 Orders goes back to some of my earliest testimony and continues to my most recent. For example, FERC used merger cases in the late 1980s and 1990s to order open access transmission systems that are the foundation of both Order 888 and the 890 Orders. I testified in several merger cases before FERC. More recently, merchant transmission lines have become an important part of the open access principles espoused by FERC. We served as the Independent Evaluator for the merchant lines named Zephyr and Chinook. In that work we helped to write an OATT consistent with the 890 Orders including the calculation of ATC; we also wrote a full IE Report as part of the FERC Docket.

5.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie. / *If written reports or depositions were provided or filed, provide a copy thereof.*

R 5.3 : Please see Attachments 1 through 4:

- Attachment 1: *Direct Testimony of Craig R. Roach, Ph.D. on behalf of TransCanada Energy Ltd., Re: British Columbia Transmission Corporation ("BCTC") Project No. 3698539 An Application to Amend the BCTC Open Access*

Transmission Tariff ("OATT") and A Complaint by TransCanada Energy Ltd. ("TCE") Regarding a Service Agreement between TCE and BCTC for Long Term Firm Point-to-Point Transmission Service, March 13, 2009.

- Attachment 2: *Rebuttal Testimony of Craig R. Roach, Ph.D. on behalf of TransCanada Energy Ltd., Re: British Columbia Transmission Corporation ("BCTC") Project No. 3698539 An Application to Amend the BCTC Open Access Transmission Tariff ("OATT") and A Complaint by TransCanada Energy Ltd. ("TCE") Regarding a Service Agreement between TCE and BCTC for Long Term Firm Point-to-Point Transmission Service, April 22, 2009.*
- Attachment 3: *Expert Report of Craig R. Roach, Ph.D., on Behalf of Énergie Brookfield Marketing Inc., P-130-001 and P-130-003, July 30, 2010.*
- Attachment 4: *Open Season Report for Zephyr Power Transmission, LLC, Docket No ER09-433-000.*

6.1 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? / *Have your services already been retained with regard to the transmission installations planning process set out in Attachment K of the FERC pro forma OATT?*

R 6.1 : I have not testified in formal cases relating to FERC's Order 890 transmission planning requirements. However, I was retained by the Southwest Power Pool Board of Directors to opine on various aspects of SPP's transmission planning process.

6.2 Si oui, fournir la liste de ces mandats et leur objet. / *If yes, provide the list of these mandates and their purpose.*

R 6.2 : Please see response to Question 6.1 above.

6.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie. / *If written reports or depositions were provided or filed, provide a copy thereof.*

R 6.3 : Please see Attachment 5:

Attachment 5: Presentation by Craig R. Roach, Ph.D. to the SPP Board of Directors/Members Committee, *Independent Review of SPP's Cost/Benefit Study for the Priority Transmission Projects*, April 27, 2010

7.1 Est-ce que vos services ont déjà été retenus relativement au calcul de l'ATC et à la coordination des ATC? / *Have your services already been retained with regard to ATC calculation and ATC coordination?*

R 7.1 : Please see response to Question 5.1 above.

7.2 Si oui, fournir la liste de ces mandats et leur objet. / *If yes, provide the list of these mandates and their purpose.*

R 7.2 : Please see response to Question 5.2 above.

7.3 Si des rapports ou témoignages écrits ont été fournis ou déposés, en fournir une copie. / *If written reports or depositions were provided or filed, provide a copy thereof.*

R 7.3 : Please see response to Question 5.3 above.

