

QUÉBEC

RÉGIE DE L'ÉNERGIE

R-3669-2008

Phase 2

HYDRO-QUÉBEC
Demanderesse

et

Intervenants

COMPENDIUM DE LA PREUVE ET DES AUTORITÉS

THÈME 2

**UNIFORMITÉ ET TRANSPARENCE POUR LE CALCUL
DE LA CAPACITÉ DE TRANSFERT DISPONIBLE**

(VOLUME 2 DE 2)

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Montréal, ce 28 juin 2011

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RÉGIE DE L'ÉNERGIE

COPIE

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

DOSSIER : R-3669-2008

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

AUDIENCE DU 3 MAI 2011

VOLUME 24

DENISE TURCOT
sténographe officielle

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R-3669-2008 3 MAI 2011 COMPARUTIONS Me JEAN-FRANÇOIS OUIMETTE, procureur de la Régie REQUÉRANTE : Me ÉRIC DUNBERRY et Me MARIE-CHRISTINE HIVON et Me LAURENCE GÉVRY-FORTIER, procureurs de Hydro-Québec Transporteur (HQT) INTERVENANTS : Me DENIS FALARDEAU, procureur de Association coopérative d'économie familiale de Québec (ACEF) Me PAULE HAMELIN, procureure de Énergie Brookfield Marketing inc. (EBMI) Me GENEVIEVE PAQUET, procureure de Groupe de recherche appliquée en macroécologie (GRAMÉ) Me ANDRÉ TURMEL et Me PIERRE-OLIVIER CHARLEBOIS, procureurs de Newfoundland Labrador Hydro (NLH) Me LOUISE CADIEUX, procureure de Ontario Power Generation Me ANNIE GARIEPY, procureure de Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ) Me DOMINIQUE NEUMAN, procureur de Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (SÉ-AQLPA) Me HÉLÈNE SICARD, procureure de Union des consommateurs (UC) Me JEAN-FRANÇOIS GIRARD, procureur de Union des municipalités du Québec (UMQ)	1 Me Marie-Christine Hivon 290 2 Me Raymond Doray 295 3 Me Paule Hamelin 301 4 5 ----- 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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1 TABLE DES MATIERES 2 Page 3 4 LISTE DES ENGAGEMENTS 4 5 LISTE DES PIÈCES 6 6 PANEL NLH (Suite) 7 GILBERT BENNETT 8 ROBERT SINCLAIR 9 Contre-interrogés par Me Éric Dunberry 24 10 VOIR DIRE SUR LA CONFIDENTIALITÉ DE LA 11 RÉPONSE FOURNIE A L'ENGAGEMENT 16 12 REPRÉSENTATIONS 13 Me Marie-Christine Hivon 113 14 Me Raymond Doray 147 15 Me André Turmel 180 16 RÉPLIQUE 17 Me Marie-Christine Hivon 218 18 Me Raymond Doray 221 19 Me Paule Hamelin 223 20 Me André Turmel 224 21 DÉCISION 225 22 PATRICK DOYLE 23 Interrogé par Me André Turmel 227 24 ARGUMENTATION 25 Me André Turmel 282	1 LISTE DES ENGAGEMENTS 2 Page 3 4 #16 : Verify whether Dr. Sinclair 5 obtained the translation of the 6 answer to the question filed on 7 June 12, 2009. 99 8 AFF-1: Fournir copie du courriel 9 mentionné au paragraphe 10 de 10 l'affidavit de monsieur Doyle. ... 251 11 12 ----- 13 14 15 16 17 18 19 20 21 22 23 24 25

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1 O.K. Alors, la Régie est prête à entendre les 2 parties sur l'ensemble de la demande en début 3 d'après-midi et requiert au besoin la disponibilité 4 du témoin Doyle, au besoin, si la Régie devait 5 conclure qu'il peut être interrogé par NLH sur 6 demande. La Régie rendra sa décision, entendra 7 évidemment, la Régie a cru entendre maître Doray 8 mentionner qu'il aurait plaidé à savoir si on a 9 besoin de se rendre à cette étape-là ou pas, mais la 10 Régie va permettre, va entendre les arguments des 11 deux parties complets. Et au fur et à mesure va 12 avancer et compte traiter l'ensemble de la demande 13 entre 13 h 00 et 15 h 00 cet après-midi. 14 On va s'assurer de pouvoir traiter le tout 15 et terminer parce que sinon, ça reporte de plusieurs 16 jours. 17 Me ANDRÉ TURMEL : 18 Je veux bien comprendre ce que vous dites. Donc, je 19 comprends qu'à 1 h 00, le Transporteur va présenter 20 sa requête et à son soutien les représentations de 21 ses procureurs, que monsieur Doyle sera dans la 22 salle et que, ensuite, on fera valoir nos points. 23 LE PRÉSIDENT : 24 La Régie va vous entendre. 25 Me ANDRÉ TURMEL :	1 requête a été déposée ce matin par TransÉnergie. 2 Nous, étant donné que le Producteur a un intérêt 3 direct puisque ce sont ses renseignements et ses 4 documents qui sont en cause, va faire des 5 représentations. Mais on n'a pas de requête en plus 6 de la requête, pour ne pas répéter indûment, mais on 7 aura de la jurisprudence, je la remettrai dès 8 13 h 00 à mon confrère. 9 Me ANDRÉ TURMEL : 10 Merci. 11 LE PRÉSIDENT : 12 Nous allons procéder à 13 h 00. 13 Me RAYMOND DORAY : 14 Je vous remercie. 15 LE PRÉSIDENT : 16 Sur ce, nous allons reprendre la suite du contre- 17 interrogatoire. Et est-ce qu'on a une indication 18 sur la durée qu'il reste pour l'administration du 19 présent panel? 20 PANEL NLH 21 GILBERT BENNETT 22 ROBERT SINCLAIR 23 CONTRE-INTERROGÉS PAR Me ÉRIC DUNBERRY : 24 En fait, il y avait deux questions additionnelles, 25 Monsieur le Président, que vous avez évoquées. La
Page 23	Page 25
1 Puis on pourra demander d'interroger... d'accord. 2 LE PRÉSIDENT : 3 Maître Doray. 4 Me RAYMOND DORAY : 5 Alors, je ferai en sorte que monsieur Doyle soit 6 présent à 13 h 00. Et si les régisseurs veulent 7 bien m'excuser puisque ma présence n'est reliée qu'à 8 la question de la confidentialité, non pas que je 9 suis persuadé que c'est passionnant ce dont vous 10 allez discuter, je reviendrais cet après-midi. 11 LE PRÉSIDENT : 12 Très bien. 13 Me ANDRÉ TURMEL : 14 Est-ce que je peux demander à mon confrère, qui a 15 sans doute sa documentation de prête, de nous faire 16 parvenir quelque document qu'il a, le cas échéant, 17 s'il les a, s'il y a une requête particulière. S'il 18 n'y a pas de requête papier, d'accord, mais comme 19 HQT nous a habitués à le déposer séance tenante, je 20 me demande juste si mon confrère aurait une 21 documentation à déposer. 22 Me RAYMOND DORAY : 23 Monsieur le Président, la requête, comme le prévoit 24 les règles de procédure de la Régie, ce sont les 25 participants qui doivent les déposer. Donc, la	1 première était l'objection à l'introduction en 2 preuve de documents additionnels par le procureur de 3 UC. 4 Nous avons écrit à la Régie, vous avez 5 sans doute eu l'occasion de prendre connaissance de 6 cette lettre-là. Nous sommes disposés pour en 7 traiter. Évidemment, maître Sicard devra être 8 présente et possiblement maître Gariépy également. 9 Nous avons compris qu'elles étaient à 10 l'extérieur pour la période, mais elles sont de 11 retour possiblement. Alors, ça pourrait se faire la 12 semaine prochaine. On a trois jours de prévus la 13 semaine prochaine pour Brookfield. On pourra peut- 14 être prendre une demi-heure, 45 minutes à 15 l'intérieur d'une de ces trois journées-là. Ou à 16 une autre date si la Régie le désire. Mais nous 17 sommes essentiellement en mesure de le faire dès que 18 la Régie et les parties seront prêtes. 19 Quant à la poursuite du contre- 20 interrogatoire, si j'ai bien compris, nous ferons 21 peut-être un deux heures ce matin. Cet après-midi, 22 ça ne se continuera pas évidemment. Alors, on 23 reviendra demain. Nous espérons terminer demain. 24 Mais malheureusement et heureusement, les choses 25 doivent être faites pour qu'on puisse tous bien

Page 26 1 comprendre la position de l'intervenant NLH. 2 Donc, est-ce qu'on pourra terminer 3 mercredi, Monsieur le Président, c'est notre 4 objectif. Mais est-ce qu'on va y arriver, je ne 5 peux pas le garantir. 6 On doit continuer l'interrogatoire de 7 monsieur Sinclair. Il y aura ensuite 8 l'interrogatoire de monsieur Sinclair sur son 9 rapport en planification ouverte, appendice K. Et 10 ensuite, monsieur Gilbert également, monsieur 11 Bennett, Gilbert Bennett, sera interrogé. 12 Alors, on en a au moins pour cinq ou six 13 heures encore de contre-interrogatoire, Monsieur le 14 Président. 15 LE PRÉSIDENT : 16 Maître Turmel. 17 Me ÉRIC DUNBERRY : 18 Oui, avant de terminer, excusez-moi. Évidemment, on 19 est toujours disponible pour travailler après les 20 heures normales. Si la Régie, comme elle l'avait 21 jugé opportun dans d'autres occasions, nous invite à 22 travailler passé 3 h 00, nous sommes tout à fait 23 disposés à le faire, que ce soit aujourd'hui ou 24 demain. Si une heure ou deux peuvent permettre de 25 compléter, évidemment on est bien conscient des	Page 28 1 Sinclair avait mentionné le matin. Et mon confrère 2 l'a contre-interrogé en après-midi sur la preuve. 3 Alors, à cet égard, je pense que... 4 Q.1 Dr. Sinclair, I think, with respect to, 5 you know, the quote from your PowerPoint 6 presentation from yesterday with respect 7 to a planning horizon, you know, the 8 formula, so I think you may have something 9 to say to the Board on this issue. 10 10H03 11 R. Yes, I think the easiest way to deal with 12 it is to look at the transcripts from 13 yesterday at page 183. 14 In the question that counsel Dunberry 15 asked me whether I no longer have an issue 16 with HQT's proposal in terms of defining 17 the equations for the three horizons, 18 that's about the middle of the quote, and 19 he is correct that I do not have an issue 20 with the identification of the three 21 horizons, but I still do have testimony on 22 the content of the equations and that was 23 with regard to the QCRD designations which 24 I discussed yesterday. 25 So, although I think HQT has... now
Page 27 1 déplacements pour les témoins. Donc, nous pouvons 2 travailler jusqu'à l'heure qui vous conviendra, 3 Monsieur le Président, Madame, Monsieur les 4 Régisseurs. 5 Me ANDRÉ TURMEL : 6 Sur ce dernier point, Monsieur le Président. Je 7 crois savoir, à moins d'indication contraire de mes 8 clients et de l'expert, qu'effectivement si on peut 9 travailler aujourd'hui ou demain certainement, 10 étirer les heures pour être capable s'il reste une 11 heure ou deux là, je ne pense pas que personne a un 12 problème à demeurer à Montréal pour terminer ce qui 13 a à être terminé. 14 LE PRÉSIDENT : 15 Alors, la Régie prend ces suggestions en note, mais 16 va devoir vérifier la disponibilité des services 17 techniques de soutien avant de pouvoir rendre une 18 décision. Alors, nous allons reprendre l'audience 19 avec le présent panel. 20 Me ANDRÉ TURMEL : 21 Oui. Et puisque l'on reprend, Monsieur le 22 Président, vous vous souviendrez hier, lors du 23 contre-interrogatoire de mon confrère à l'égard du 24 docteur Sinclair, il s'était posé une question, ce 25 n'était pas clair là qu'est-ce que le docteur	Page 29 1 has the names of the horizons correct, I 2 still have issues with the designation of 3 native load resources in those equations. 4 Me ÉRIC DUNBERRY : 5 Q.2 Thank you, Mr. Sinclair, for this 6 additional comment. We will be coming 7 back to the QCRD issue later during your 8 cross-examination. 9 At this point, I would like to ask 10 you to take a copy of your report and go 11 back to pages 38 to 40 in this section 12 that is entitled How Can the ATC 13 Harmonization Lead to Undue 14 Discrimination? 15 Now, when we read this section, we 16 understand that it is your view that ATC 17 coordination can lead in certain 18 circumstances to discrimination or undue 19 discrimination. Is that correct? 20 R. Yes. 21 Q.3 Now, this report that you filed was 22 completed and produced prior to a decision 23 that was rendered by this Régie, not this 24 bench but other régisseurs in the matter 25 opposing Brookfield to TransÉnergie in a

Page 30 1 complaint process. You're aware of that 2 complaint process obviously because you 3 refer to it in your report? 4 R. Yes. 5 Q.4 Were you provided with a translation of 6 that decision after it was rendered in 7 December 2010? 8 R. Yes. 9 Q.5 And did you review that translation? 10 R. I did. 11 Q.6 Do you have a copy of your translation 12 with you right now or... I have a 13 translation of some of the passages I'm 14 going to use. Vous l'avez, O.K. So, I 15 will be referring you to the decision. 16 R. I have a copy. 17 Q.7 I will be using my French copy because 18 your translation and mine are probably not 19 exactly the same. The translators may 20 actually have different views on occasion. 21 So, I will be using the French copy but 22 you have your own translation. And I hope 23 it will not be an issue and that the 24 translation that you will use is accurate 25 enough.	Page 32 1 harmonization. » 2 Obviously that was written in September 3 2010 which was three months prior to the 4 decision. 5 Now that that decision has been 6 rendered and that you have reviewed it, is 7 it still your... is it still your view? 8 Well, actually, before I ask the question, 9 you may want just to look at line number 10 7, same page, where you start this 11 paragraph by saying: 12 « HQT should adopt the 13 policy on rollover 14 rights used by FERC. » 15 So, my question to you now and today, May 16 the 3rd, after all of this, are you still 17 recommending that this Régie, and I quote 18 you: 19 « ... must invoke the 20 curtailment procedure 21 under Section 13.6 of 22 the revised HQT OATT 23 at the time the 24 harmonization 25 occurred. »
Page 31 1 Now, when you read that decision, you 2 noticed that the discussion about the 3 applicability of Section 13.6, did you 4 not? 5 R. Yes. 6 Q.8 Okay. Now, do you think that the contents 7 of that decision that was rendered a few 8 months ago is relevant to the issue of ATC 9 coordination and curtailment following 10 coordination of ATC on an intertie? Do 11 you think there is any relevance in that 12 decision? 13 R. Yes. 14 Q.9 Now, in your report, you make certain 15 recommendations to the Régie concerning 16 the applicability as well of Section 13.6. 17 Do you maintain your recommendation? And 18 we find your recommendation on page 40, I 19 believe? If you look at page 40, lines 13 20 to 15, you say, and I quote you: 21 « HQT must invoke the 22 curtailment procedures 23 under Section 13.6 of 24 the revised HQT OATT 25 at the time of the	Page 33 1 Do you maintain that recommendation? 2 Me ANDRÉ TURMEL : 3 Excusez-moi, Confrère, peut-être juste... vous 4 parlez de la décision du 20 décembre 2010, vous y 5 avez fait allusion mais c'est une décision de 35 6 pages. Peut-être juste situer s'il y a un passage 7 particulier qui vous intéresse pour qu'au moins... 8 je comprends ce que vous faites, là, mais au moins 9 pour que le témoin soit dirigé dans le paragraphe 10 pour qu'il puisse peut-être le relire tout 11 simplement. 12 Me ÉRIC DUNBERRY : 13 Q.10 So, the paragraph, Mr. Sinclair, you will 14 find them quickly if you review that 15 decision, it's paragraphs 122 to 125 of 16 the decision D2010-160. And if you read 17 these paragraphs you will see the 18 conclusion in bold where it is said, and I 19 quote in French: 20 « La Régie conclut que 21 l'état de la situation 22 actuelle sur le chemin 23 HQT-NE ne met pas en 24 péril l'exploitation 25 fiable du réseau de

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1 for a pro rata curtailment or do you know 2 if they call for a different type of 3 curtailment in the event of an ATC 4 reduction? 5 R. Again, I don't think they do address this 6 specific case of the reduction in ATC. 7 But they do have, I think, have a general 8 statement about they should be used in 9 cases of emergency. And I think that's 10 what the Régie applied in the Brookfield 11 decision. 12 Q.27 You think that the rules of curtailment on 13 the OASIS are not applicable to reduction 14 of ATCs? 15 R. I don't remember seeing that. 16 Q.28 I will exhibit to you a copy of those 17 rules. I only have a French copy so we 18 will only use what I have in French, 19 unfortunately, but I can translate this 20 quickly. It's on page 21, Mr. Sinclair. 21 If you look at page 21, there's a table 22 and... 23 Me ANDRÉ TURMEL : 24 Est-ce qu'on a la date? 25 Me ÉRIC DUNBERRY :	1 programmes en fonction des services 2 auxquels ils sont liés », so it deals with 3 reduction. Do you feel like adjusting 4 what you testified about earlier or would 5 you see that being relevant on the issue 6 of ATC reduction? Those rules contained 7 in that table that you see now? 8 R. I can't read it so I don't know. 9 Q.32 All right. 10 Me ANDRÉ TURMEL : 11 Une question... 12 Me ÉRIC DUNBERRY : 13 Q.33 I will... 14 Me ANDRÉ TURMEL : 15 ... avant que vous le produisiez. C'est un document 16 d'OASIS, est-il en anglais, y a-t-il un document 17 anglais sur OASIS? Question tout à fait là... 18 Il y a deux questions qui me... bien, qui 19 m'interpellent ici, c'est habituellement sur - et 20 vous me corrigerez - ce qui est sur OASIS... parce 21 qu'évidemment vous questionnez un témoin anglophone, 22 c'est un texte en français, HQT a-t-il fourni une 23 traduction sur le site OASIS de ce document? 24 Me ÉRIC DUNBERRY : 25 Monsieur le Président, j'essaie de comprendre. J'ai
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1 It's what's available on OASIS. The date is March 2 21st, 2011 on my first page, Monsieur le Président. 3 Q.29 If you look at page 21, there's a table 4 and I was wondering whether... it's table 5 17, the title is... pardon? 6 Mme LUCIE GERVAIS : 7 Je ne veux pas vous interrompre, je me demandais 8 juste s'il y avait une cote. 9 Me ÉRIC DUNBERRY : 10 Ah, elle va venir, Madame la... 11 Mme LUCIE GERVAIS : 12 Il n'y a pas de faute. 13 Me ÉRIC DUNBERRY : 14 Ça va, Madame la Régisseuse Gervais? 15 Q.30 So, there is on this page 21... the title 16 in French is « Réduction des programmes en 17 fonction des services auxquels ils sont 18 liés » and there's, you know, a sequence 19 of steps, 1, 2, 3, 4, 5, and there's a 20 description of various elements. And I 21 won't translate all this, I'll simply ask 22 you whether you saw this before you 23 testified yesterday? 24 R. No, I don't remember seeing this. 25 Q.31 And the title is « Réduction des	1 une copie en français, je l'avais ce matin, je 2 pensais que le témoin allait tout simplement 3 admettre que ces documents-là existaient. J'ai posé 4 la question. J'ai une copie en français comme à 5 l'occasion j'ai une copie en français. J'ai 6 certains documents qu'on a fait traduire. Lui, je 7 ne l'ai pas en anglais. Je pose la question, le 8 témoin dit qu'il ne peut pas aller plus loin avec 9 cette version. C'est tout là. Je n'ai pas la copie 10 en anglais. 11 Quel est l'objectif de cette intervention? 12 En réinterrogatoire, si maître Turmel veut poser des 13 questions, s'il veut introduire des documents 14 additionnels, il pourra le faire. On a un service 15 de traduction, j'ai lu le titre. Alors, quel est 16 l'objectif de cette intervention de maître Turmel 17 sinon encore une fois pour des raisons que je ne 18 comprends pas d'interrompre le procureur. 19 Me ANDRÉ TURMEL : 20 Maître Dunberry, vous vous apprêtez à déposer ce 21 document-là, la seule question que je vous pose 22 c'est ce document-là existe-t-il en anglais? Est-il 23 sur le site OASIS? Ce n'est pas compliqué à 24 vérifier. 25 Me ÉRIC DUNBERRY :

Page 50 1 Bien, je présume que oui, il existe en anglais. 2 Me ANDRÉ TURMEL : 3 Bon, O.K., donc il existe en anglais. 4 Me ÉRIC DUNBERRY : 5 Bon, comme le site est traduit, je présume que oui. 6 Me ANDRÉ TURMEL : 7 D'accord, bon, il est en anglais. Vous utilisez ce 8 matin un document français, d'accord. 9 Deuxièmement, il est daté du 21 mars 2011. 10 Y a-tu une version antérieure à ce document-là? 11 Me ÉRIC DUNBERRY : 12 Monsieur le Président, je vais répondre à toutes ses 13 questions à mon collègue à la pause, on pourra 14 discuter de ça s'il le veut, j'essaie d'avancer un 15 contre-interrogatoire et mon interrogatoire est 16 continuellement interrompu pour des questions qui 17 pourraient être posées hors du contre-interrogatoire 18 par mon collègue, s'il veut les poser. Il peut 19 poser des questions à monsieur Clermont à la pause, 20 qui est ici avec nous, qui pourra répondre s'il veut 21 bien. 22 Alors, je ne vois pas vraiment, et c'est 23 continu et c'est répété et c'est très irritant, je 24 vous le souligne avec respect. 25 LE PRÉSIDENT :	Page 52 1 Q.35 And do you know personally whether any 2 complaints were filed by any client of 3 TransÉnergie with respect to any other 4 intertie of TransÉnergie but for the HQT- 5 New England intertie? 6 R. Are you referring to harmonization? 7 Q.36 Yes. Again to... 8 R. No. 9 Q.37 No, you're not aware? 10 R. I'm just aware of the Brookfield case. 11 Q.38 You're only aware of the Brookfield case, 12 okay. So, I assume that you did not, and 13 I follow this from your answer, I assume 14 that you did not perform any research to 15 determine whether this July 2009 ATC 16 coordination actually led to any other 17 complaints? 18 R. No, I didn't think it was necessary given 19 that there were these facts that showed 20 one example of discrimination. And to me, 21 one example is enough to illustrate my 22 point. 23 Q.39 And obviously it is your interpretation of 24 that case, that it was a case about 25 discrimination?
Page 51 1 Alors, la Régie ne retient pas la deuxième question. 2 Quant à la disponibilité de documents en anglais, 3 dans les circonstances, il serait, pour le bon 4 déroulement des travaux, il serait utile que si le 5 même document existe en anglais, sachant que les 6 témoins sont anglophones, ça aurait été utile de 7 l'avoir en anglais pour que le repérage soit plus 8 facile pour ceux qui ont à répondre aux questions à 9 l'audience. 10 Évidemment, vous avez eu une question mais 11 s'il a un commentaire additionnel à donner ou 12 autres, bien... disons que la courtoisie pourrait 13 ici s'étendre à si le document existe et est aussi 14 disponible en anglais qu'en français, donc pour 15 faciliter l'avancement des travaux. 16 Au-delà de ça, la Régie vous permet de 17 continuer votre interrogatoire. 18 Me ÉRIC DUNBERRY : 19 Merci, Monsieur le Président. 20 Q.34 Alors, Mr. Sinclair, as a matter of fact, 21 are you aware if, except for Brookfield, 22 any other complaints were filed by any 23 other client of TransÉnergie following the 24 July 2009 ATC coordination? 25 R. No, I'm not aware.	Page 53 1 R. Yes, it looked like it to me, from the 2 facts that I read, that it was 3 discriminatory. 4 Q.40 And the facts that you read, we will know 5 by way of undertaking what you've actually 6 read about this. By way of undertaking, 7 you will provide us with a list of the 8 documents you read, right? 9 R. Oh yes. And I did some of that last night 10 and now I recall that I did read Mr. 11 Roach's report in the complaints, 12 complaint 103. 13 Q.41 Did you read Mr. Roach's report before 14 filing your September 23rd, 2010 report? 15 R. Yes, his report was filed in July of 2010. 16 Q.42 And who provided you with a copy of Mr. 17 Roach's report? 18 R. I believe it was NLH. The key facts that 19 I used in that case did not, to me, seem 20 to be in dispute as far as what had 21 happened with the request, Brookfield's 22 request, and how they were notified of the 23 status of their request at all, it seemed 24 not to be in dispute. So, I felt that 25 those facts were adequate to base my

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1 conclusions. 2 10H32. 3 Q.43 Were you provided with a copy... I'll come 4 back to this later. 5 On page 8 of your report, going to a 6 few points here, page 8, line 13. You 7 made this, and I'm asking you the question 8 because you said earlier yesterday that 9 you maintained the entire content of your 10 report. In this Section, line 13 to line 11 21, you indicate that HQT - line 17 - is 12 delaying indefinitely the coming into 13 force of the new ATC requirement and 14 therefore delaying indefinitely the full 15 implementation of the Order 890 reform 16 because it did not specify when its new 17 OASIS system would be ready. 18 Now, I understand that you said that 19 in September 2010 but you maintained that 20 by adopting your report yesterday. So I 21 may have to ask you the question whether 22 you are or not aware of the fact that the 23 new OASIS is actually online? 24 R. Yes, I think I wrote this in 2009. So, 25 sitting here, I'm not aware whether or not	1 didn't want to make any changes to your 2 report, did you review your report before 3 making that allegation? 4 R. Yes, I reviewed my report. 5 Q.48 Okay. Now, you say as well on page 12, 6 line 5, page 5... page 12, sorry, lines 5 7 to 7, and I quote you: 8 « Because of the lack 9 of clarity and the 10 complexity of the 11 issues involved, I 12 recommend that Régie 13 instruct HQT to hold 14 technical sessions 15 with stakeholders to 16 explain the OASIS 17 system in the context 18 of the revised HQT 19 OATT. » 20 Do you want to maintain that statement, 21 Mr. Sinclair? 22 R. Yes. 23 Q.49 Okay. During his examination in chief, 24 Mr. Clermont said that these technical 25 sessions were actually held. I would like
Page 55	Page 57
1 the new OASIS is online. 2 Q.44 You don't know that. 3 R. Of course. 4 Q.45 Your client NLH did not advise you, inform 5 you that the new OASIS... whether it's 6 online or not online? 7 R. They may have informed me and then because 8 I wrote this in 2009 I may have forgotten 9 that I put that recommendation in. So, I 10 did not register with me that I should 11 need to go back. 12 Q.46 So, can we agree that we should actually 13 remove or not take into account those 14 allegations that we are delaying 15 indefinitely the coming into force of the 16 new ATC requirements, lines 13 and 21, 17 would you agree to remove that passage on 18 the basis that the new OASIS system is 19 actually online or you prefer to let it 20 there because you don't know if it's 21 online or not? 22 R. Yes, I don't know. I think I should just 23 check to see whether it's online in the 24 fashion that I was contemplating there. 25 Q.47 Okay. When you said yesterday that you	1 to refer you to volume 1, October 18, 2 2010. You said yesterday you didn't 3 recall if you were there or not there, so 4 I will be reading this. I don't have a 5 translation of this extract. 6 Me ANDRÉ TURMEL : 7 What page? 8 Me ÉRIC DUNBERRY : 9 Page 126. Volume 1, 18 octobre 2010, Monsieur le 10 Président. 11 Q.50 So, that was a presentation made by Mr. 12 Clermont. Again, it was a long answer to 13 a simple question. And I will read this 14 in French so you can follow me with the 15 earset, line 2. 16 LE PRÉSIDENT : 17 Quelle page déjà? 18 Me ÉRIC DUNBERRY : 19 126. 20 LE PRÉSIDENT : 21 126. Merci. 22 Me ÉRIC DUNBERRY : 23 Q.51 « Il y a eu des 24 questions aussi sur 25 l'entrée en vigueur de

Page 58	Page 60
1 l'appendice C-1. Bien 2 sûr, le Transporteur 3 avait déjà indiqué que 4 ça prenait son nouveau 5 site OASIS pour 6 pouvoir le faire. 7 Comme tous les clients 8 du transport le 9 savent, le nouveau 10 site OASIS est prévu 11 être mis en service le 12 26 octobre prochain. 13 Donc, d'ici les deux 14 prochaines semaines, 15 nous devrions avoir un 16 système OASIS. 17 D'ailleurs, tous les 18 clients ont reçu les 19 séances de formation 20 nécessaires sur ça. » 21 Now, I assume you are not aware, you were 22 not aware when you testified yesterday 23 that these training sessions had taken 24 place - and I quote - pour tous les 25 clients? At least, they were invited, I	1 Did you ask that? 2 R. I think I answered that I was not aware. 3 Q.55 No but did you ask? 4 R. I did not ask. 5 Q.56 Did you ask? 6 R. I did not ask. 7 Q.57 The answer is no? 8 R. No. 9 Q.58 Okay. 10 R. And I can't comment on whether that 11 training session meets what I contemplated 12 in my testimony not knowing the nature of 13 it. So, I can't... I can't say whether 14 HQT has met my recommendation here. 15 Q.59 Now, page 38, line 1, coming back to the 16 issue of data exchange, you specifically 17 refer to Labrador and you say on line 2 18 that Hydro-Québec should commit to 19 developing data exchange with neighbouring 20 systems including synchronously 21 interconnect with Labrador that meets the 22 requirement of Order 890. 23 When you mean Labrador, you refer to 24 your client NLH, I presume? 25 R. Yes, I suppose they would be in charge of
Page 59	Page 61
1 assume. 2 Were you made aware by NLH that these 3 training sessions had been set up and that 4 they were held? 5 R. Yes, I don't remember... I don't remember 6 being made aware of that. 7 Q.52 But again, when yesterday you revised your 8 report and you decided to maintain a 9 recommendation so that the Régie would 10 instruct my client to hold training 11 sessions, did you not want to verify 12 whether these sessions were actually held 13 or not? 14 R. Well, I think I had my in mind more of a 15 workshop which wouldn't just be how to use 16 a software but perhaps some of the 17 engineering ideas behind the ATC 18 calculations. 19 Q.53 But, as a matter of fact, did you ask 20 TransÉnergie whether these sessions were 21 held or not? 22 R. No, I did not ask. 23 Q.54 No. Did you ask your client whether they 24 were trained, whether they participated or 25 were invited to these training sessions?	1 that. 2 Q.60 You wouldn't do data exchange with 3 Labrador? You would do data exchange 4 with... 5 R. Yes, somebody that operates the system 6 there. 7 Q.61 So, you meant NLH? 8 R. Right. 9 Q.62 Yes. Do you know if NLH has adopted an 10 OATT in Labrador? Is there an OATT in 11 Labrador, a recognized OATT in Labrador? 12 R. I think there is not. 13 Q.63 Yes. Do you know if there is an OASIS in 14 Labrador? 15 R. I believe there is not. 16 Q.64 Yes. In the absence of an OASIS, do you 17 know whether there is an ATC value posted 18 on the Labrador side of the LAB-HQT 19 intertie? I guess it would be difficult 20 to post something on an OASIS which 21 doesn't exist. Right? 22 R. Yes, I don't think NLH posts an ATC on an 23 interconnection. 24 Q.65 Okay. I'd like to come back, and that 25 would be my last point on this data

Page 62 1 exchange. Yesterday, you indicated that 2 you read Mr. Hanser's report and some of 3 his answers to requests for information 4 and that you felt that that was sufficient 5 for the recommendations contained in your 6 report. 7 I'd like to refer you again to those 8 requests for information and to Mr. 9 Hanser's report, just to complete on that 10 line of questions. 11 I'd like you to take a copy of Mr. 12 Hanser's report. It's HQT-28, document 1. 13 R. Okay. 14 Q.66 Now, in your report you distinguish 15 between requirements for ATC coordination 16 on one end and also requirements for data 17 exchange on the other hand. Is that 18 correct? These are like two things which 19 are interconnected but these are two 20 notions that you address in your report. 21 Is that fair? 22 R. I thought those were together. 23 Q.67 They are interconnected, that's right, but 24 you do refer to data exchange as an issue 25 and coordination as well as a different	Page 64 1 and exchange data and assumptions. This 2 is fairly much the language used in FERC 3 order. Would you agree with that? 4 R. Yes. 5 Q.70 Okay. Now, I'd like to refer you to the 6 first request for information that you 7 filed. I assume you drafted those, your 8 name appears on that. It's document HQT- 9 8, document 5. 10 R. Yes, I have it, thank you. 11 Q.71 Okay. So, this HQT-8, document 5, is 12 NLH's first request for information and 13 there is a number of questions on a number 14 of issues that I'd like to refer you to 15 page 6 of 37. 16 R. I'm sorry. You are referring to HQT-29, 17 document 5.1? 18 Q.72 No, I'm in HQT-8, document 5. Did I say 19 the opposite? HQT-8, document 5. 20 R. Okay. 21 Q.73 Okay. 22 R. Let me just get it on my screen. 23 Q.74 Okay. 24 Me ANDRÉ TURMEL : 25 Quelle est la cote de la Régie juste pour vérifier
Page 63 1 issue. Am I right just for purposes of 2 asking a question? 3 R. Yes, okay. 4 Q.68 Okay. Now, if you look at Dr. Hanser's 5 report on page, actually I don't see the 6 page number but it's paragraph 6, Scope of 7 Mandate. 8 R. Okay. 9 Q.69 His first question was to provide or 10 discuss a brief history of FERC's Open 11 Access Transmission policies as it relates 12 to ATC coordination, et cetera. 13 The second question was to discuss 14 whether HQT's methodology for ATC 15 coordination is consistent and complies 16 with the relevant FERC orders. 17 I assume you saw that definition of 18 his mandate. 19 I re-read his report yesterday and 20 maybe you'll trust me, maybe you won't but 21 the words « data exchange » only appear in 22 his entire report in two places only, 23 paragraph 13 where it refers to the notion 24 of exchange data, line 5, and paragraph 14 25 when he refers to, line 5, to coordinate	Page 65 1 parce que... vous l'avez la cote de la Régie? 2 Me ÉRIC DUNBERRY : 3 HQT-8, document 5. 4 Me ANDRÉ TURMEL : 5 Non, ça, c'est vous ça. 6 Mme LUCIE GERVAIS : 7 B-132. 8 Me ANDRÉ TURMEL : 9 B? 10 Mme LUCIE GERVAIS : 11 132. 12 Me ANDRÉ TURMEL : 13 O.K., merci. 14 R. Okay. Okay. I've got it now. 15 Me ÉRIC DUNBERRY : 16 Q.75 All right. So, we see that this is 17 something that you prepared or if we look 18 at page 3 of 37, it says « Information 19 request submitted by Robert Sinclair. » 20 R. Yes. 21 Q.76 Okay. So, I assume you worked on this? 22 You prepared this yourself, Mr. Sinclair? 23 R. Yes. 24 Q.77 Okay. These are all the questions that 25 you asked on - and if you look at page 5

Page 66	Page 68
1 of 37 - these are all the questions that 2 you asked on consistency and transparency 3 of ATC calculations. 4 And the only question that I found 5 that related perhaps indirectly to data 6 exchange was question 2.1 on page 36 of 7 37... on page 6 of 37. 8 R. Yes, that... well, I think there is a 9 couple of sets of data requests done. If 10 you look at HQT-29... 11 Q.78 Yes, we'll get there, Mr. Sinclair. 12 R. Okay. 13 Q.79 I apologize. We'll get there, I have it 14 here. It's right here in my little pile. 15 R. Okay. 16 Q.80 So, may I suggest that in your first 17 request for information, you did not ask 18 Mr. Hanser or HQT any question about data 19 exchange except question 2.1? Can we 20 agree on this? I know there's HQT-29 but 21 we'll come back. 22 10H47 23 R. Yes, I think you're right. 24 Q.81 Okay. So, there was that one question. 25 Now, let's go to HQT-29, document 5.1.	1 the question. » 2 And that was the answer. And I believe 3 you continued with certain questions on 4 data exchange. And if you look at page 6 5 of 9, there are other questions that deal 6 with coordination. And these answers were 7 again answered by Mr. Hanser as: 8 « H Q T ' s 9 representatives would 10 be best placed to 11 answer this question, 12 if the Régie allows 13 the question. » 14 So, you were told by Mr. Hanser that he 15 felt that these questions, factual issues 16 perhaps in his mind, were to be treated 17 perhaps more efficiently by in fact 18 monsieur Clermont who testified on 19 numerous occasions on this. You saw his 20 responses I assume? 21 R. Yes. 22 Q.82 Now, if you look at HQT-29, document 3, 23 and this was Brookfield, so HQT-29, 24 document 3, page 39 of 58. 25 R. So, this is... okay.
Page 67	Page 69
1 This is a second request for information. 2 This one was specifically prepared and 3 addressed to Mr. Hanser. HQT-21, document 4 5.1. And you asked again a number of 5 questions. And I think the answers to the 6 questions, the more relevant ones, but you 7 can read through, but on data exchange, 8 you'll find it on page 4 of 9. So, you 9 did ask questions on data exchange. On 10 page 4 of 9, question 3.b and the answer 11 of Mr. Hanser was the following, because 12 it dealt with data exchange and I guess 13 Mr. Hanser felt that this was a factual 14 issue. It was a question with respect 15 to... the question was: 16 « What kind of data is 17 exchanged with 18 neighboring systems. » 19 So, that was an issue perhaps of facts. 20 Mr. Hanser responded: 21 « H Q T ' s 22 representatives would 23 be best placed to 24 answer this question, 25 if the Régie allows	1 Q.83 Okay? 2 R. I have 51 pages on mine. 3 Q.84 Yes. So, this is... I have 39 of 58, 4 which is revised, 6 October 2010. But 5 these are not the revised answers, these 6 are original answers dating back to August 7 2010. 8 R. I have the original so let me see... 9 Q.85 But that's all right. If you have the 10 original, we have the questions. 11 R. Okay. 12 Q.86 I could show you mine but the questions 13 were there back then in August 2010. So, 14 if you look at question 30.1, page 39 of 15 58, so this is Brookfield: 16 « Please provide a 17 list of the specific 18 data and assumptions 19 that were exchanged 20 and/or analyzed. » 21 Answer by Mr. Hanser: 22 « H Q T ' s 23 representatives are 24 best placed to answer 25 this question, if the

Page 70	Page 72
1 Régie allows the 2 question. » 3 Question 30.2: 4 « How often are these 5 data and assumptions 6 exchanged? » 7 Same answer. 8 « What specific 9 parties are 10 involved? » 11 Same answer. 12 « How and when are 13 existing and 14 prospective 15 transmission customers 16 given an opportunity 17 to participate in this 18 data exchange? » 19 Again, an invitation to ask questions 20 to... 21 So, Mr. Hanser, in these requests for 22 information, invited you to ask questions 23 or to consider the evidence from HQT's 24 representatives and you were aware of that 25 by receiving Mr. Hanser's response, is	1 this it would have had 2 an impact on your 3 opinion that you 4 delivered this 5 morning? » 6 « Well, no, I don't 7 think so because when 8 I addressed the data 9 exchange and the 10 coordination issue, I 11 really relied on the 12 expert report of Mr. 13 Hanser and I thought I 14 was careful enough to 15 ask information 16 requests that 17 eliminated the 18 possibility that there 19 was a basis for 20 limiting the data 21 exchange to those very 22 few elements that he 23 identified. 24 In other words, in the 25 IRs I was looking for
Page 71	Page 73
1 that correct? 2 R. That's correct. 3 Q.87 Now, let's look at what you said 4 yesterday. Yesterday, in the 5 transcript... Volume 23, Monsieur le 6 Président, of yesterday. 7 R. Can you tell me the page? 8 Q.88 Yes, it starts at page 231. This is what 9 you said yesterday at page 231, question 10 277, and the question was... and I was 11 referring to all the evidence given by 12 monsieur Clermont and the evidence dealing 13 with data exchange, including the 14 confidential material and I asked you the 15 question, question 277 on page 231. Line 16 24, that was your answer? Well, let me 17 read the question: 18 « Well, we saw a 19 number of documents 20 you and I, I showed 21 you documents, I 22 referred to extracts, 23 transcripts. My 24 question is whether 25 had you reviewed all	1 any kind of 2 justification for not 3 expanding the data 4 exchange to the 5 requirements of the 6 Order 890. And when I 7 didn't find it in 8 there, I felt that was 9 sufficient to base an 10 opinion on because I 11 was talking directly 12 to your expert. » 13 And then I continue by saying: 14 « So, you assumed Mr. 15 Hanser had a mandate 16 to describe the data, 17 et cetera, et 18 cetera. » 19 So, I just want to understand what you 20 said yesterday. We saw from Mr. Hanser's 21 report that he was not actually discussing 22 data exchange in his report and we saw 23 from the requests for information that 24 when you asked him about questions on data 25 exchange he said: « Well, you should ask

Page 74 1 these questions and consider the answers 2 of HQT's representatives because they're 3 best placed. » Now, we saw that you 4 didn't review... 5 Me PAULE HAMELIN : 6 Je m'excuse, il faut juste faire attention parce 7 qu'on paraphrase l'expert sur ses réponses de 8 demandes de renseignements et on détermine... ce 9 n'est pas à maître Dunberry de déterminer qui est la 10 personne ou le témoin le mieux placé pour répondre à 11 ces questions. 12 Alors, je veux juste faire attention sur 13 le fait qu'on essaie de conclure à l'effet que c'est 14 le Transporteur qui est le mieux à même à fournir 15 cette information-là parce que c'est des questions 16 que j'ai moi-même posées à l'expert monsieur Hanser. 17 Alors, je veux juste qu'on fasse attention à ce 18 niveau-là. 19 Merci. 20 Me ÉRIC DUNBERRY : 21 Q.89 So, if I may ask a question, my question 22 was considering Mr. Hanser's responses, 23 and you can read them as well, how can you 24 say that your opinion was based on Mr. 25 Hanser's responses or report when in fact	Page 76 1 to specifically deal 2 with the issue of 3 coordinating and 4 exchanging data and 5 assumptions. » 6 So, in your preamble you said that he did 7 not testify on data exchange and 8 coordination but he does say that in 9 there. And I verified that in my data 10 requests. So, I just wanted to... didn't 11 want to leave that impression in the 12 record. 13 With respect to the answer to the 14 question, I think Mr. Hanser's response to 15 data requests, information requests, 16 supports what I said yesterday, was that 17 from policy matter, the OATT should 18 contain a prescription of the data that 19 should be exchanged between neighbouring 20 systems. It's a question of fact after 21 that whether policy makers, such as the 22 Régie, should allow transmission providers 23 to limit that to a smaller amount of data. 24 And Mr. Hanser himself says it's not 25 really a question of policy.
Page 75 1 Mr. Hanser specifically wrote that these 2 questions were to be addressed or were 3 best placed with HQT's representatives? 4 R. Okay. First of all, in your preamble to 5 the question, you said that Mr. Hanser 6 does not address data exchange but I want 7 to just read back part of his report at 8 paragraph 16 where he does say: 9 « From my reading of 10 Attachment C-1 to 11 HQT's OATT, I 12 understand that HQT's 13 intentions are to 14 reflect FERC Order 890 15 and subsequent 16 clarifying Orders 890- 17 A through C by 18 providing market 19 participants the 20 proper ATC values 21 across its interfaces 22 with neighboring 23 systems. I find that 24 HQT procedures and 25 formulae are developed	Page 77 1 So, Mr. Hanser and I have a 2 disagreement on policy. The facts can be 3 addressed by policy makers. So, I believe 4 that Mr. Hanser and I both feel that we 5 look at the OATT, we determine how the 6 OATT should be interpreted in this 7 context. The facts can come later to be 8 assessed by a factual fact-finding body. 9 Q.90 Perhaps my question was not accurate. My 10 question really is how can you conclude in 11 your report that HQT failed to comply with 12 FERC's requirement when you're told by Mr. 13 Hanser that it's a question to be 14 discussed on a factual basis with... and 15 after a review of the evidence provided by 16 HQT, that you did not review when you saw 17 that. How could you justify that opinion 18 without actually having read or reviewed 19 the factual evidence? 20 R. Well, first of all, I didn't say that HQT 21 failed in exchanging data. I'm saying 22 that the HQT proposed OATT does not meet 23 the requirements of Order 890 and I 24 explained that in my testimony. I have a 25 disagreement with Mr. Hanser on exactly

RÉGIE DE L'ÉNERGIE

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

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

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DENISE TURCOT
sténographe officielle

Page 2 R-3669-2008 4 MAI 2011 COMPARUTIONS Me JEAN-FRANÇOIS OUMETTE, procureur de la Régie REQUÉRANTE : Me ÉRIC DUNBERRY et Me MARIE-CHRISTINE HIVON et Me LAURENCE GÉVRY-FORTIER, procureurs de Hydro-Québec Transporteur (HQT) INTERVENANTS : Me DENIS FALARDEAU, procureur de Association coopérative d'économie familiale de Québec (ACEF) Me PAULE HAMELIN, procureuse de Énergie Brookfield Marketing inc. (EBMI) Me GENEVI VE PAQUET, procureuse de Groupe de recherche appliquée en macroécologie (GRAME) Me ANDRÉ TURMEL et Me PIERRE-OLIVIER CHARLEBOIS, procureurs de Newfoundland Labrador Hydro (NLH) Me LOUISE CADIEUX, procureuse de Ontario Power Generation Me ANNIE GARIÉPY, procureuse de Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ) Me DOMINIQUE NEUMAN, procureur de Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (SÉ-AQLPA) Me HÉLÈNE SICARD, procureuse de Union des consommateurs (UC) Me JEAN-FRANÇOIS GIRARD, procureur de Union des municipalités du Québec (UMQ)	Page 4 LISTE DES ENGAGEMENTS Page 1 2 3 4 #2 (RÉVISÉ): 5 Provide a list of all documents 6 provided to Dr. Sinclair by NLH 7 on which he relied to draft 8 Section 2, pages 7 to 12 and 34 9 to 40; and section 3, pages 12 10 to 23 and 40 to 42. 208 11 #6 (RÉVISÉ): 12 Verify and confirm whether Dr. 13 Sinclair attended at the 14 hearings of October 18, 19, 20, 15 21 and 22, 2010. Verify and 16 confirm whether Dr. Sinclair 17 attended at the hearings of 18 October 18 and 19, 2010. 210 19 20 ----- 21 22 23 24 25
Page 3 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 TABLE DES MATIÈRES Page LISTE DES ENGAGEMENTS 4 PANEL NLH GILBERT BENNETT ROBERT SINCLAIR Contre-interrogés par Me Éric Dunberry 7 Contre-interrogés par Me M.-C. Hivon 63 Contre-interrogés par Me Éric Dunberry 132 Contre-interrogés par Me M.-C. Hivon 186 -----	Page 5 1 EN L'AN DEUX MILLE ONZE (2011), ce quatrième (4e) 2 jour du mois de mai, 3 4 LA GREFFIERE : 5 Prenez place, s'il vous plaît. 6 LE PRÉSIDENT : 7 Bonjour à toutes et à tous. Reprise de l'audience. 8 Madame Guilhermond. 9 LA GREFFIERE : 10 Protocole d'ouverture. Audience du 4 mai 2011, 11 dossier R-3669-2008 - Phase 2. Demande relative à 12 la modification des Tarifs et conditions des 13 services de transport d'Hydro-Québec à compter du 14 1er janvier 2009. Poursuite de l'audience. 15 Me ÉRIC DUNBERRY : 16 Monsieur le Président, bonjour. 17 LE PRÉSIDENT : 18 Bonjour. 19 Me ÉRIC DUNBERRY : 20 Madame, Monsieur les régisseurs, bonjour. Alors, 21 l'horaire de la journée, si vous me permettez peut- 22 être de l'annoncer tout de suite, nous allons 23 poursuivre le contre-interrogatoire de monsieur 24 Sinclair qui devrait se terminer, quant à moi, dans 25 une heure, une heure et demie environ.

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1 discuss things that perhaps we do not 2 agree on, on page 9, from lines 10 to 13, 3 you say the following and we just read 4 that actually. The second part of that 5 line says: 6 « The QCRND firm 7 appears to create firm 8 rights from non- 9 designated resources 10 which is not 11 consistent. » 12 So, your point of contention, at least in 13 that section, refers to the fact that the 14 QCRND firm inscription would create firm 15 rights from non-designated resources to 16 serve the native load and you find that, 17 the firmness of these transmission rights, 18 you find that inconsistent with FERC pro 19 forma OATT. 20 R. Yes. 21 Q.15 That is your point? 22 R. Yes. 23 Q.16 Okay. So, your point basically is that 24 firm imports to serve the native loads 25 have to be arranged under Part II of the	1 Q.22 QCRND environment. And your point of 2 contention is that QCRND firm violates 3 FERC's pro forma. So, maybe I should ask 4 you a different question: if you look at 5 page 10, maybe there is the answer on line 6 14, you say, page 10, line 14, you say: 7 « Point-to-point 8 service and native- 9 load service must be 10 kept mutually 11 exclusive. » 12 You maintain that statement, I assume? 13 R. Yes. 14 Q.23 So, point-to-point service, Part II, has 15 not been designed or adopted for purposes 16 of serving the native load in Québec? You 17 know that for purposes of serving the 18 native load, rights and obligations are 19 created in Part IV of that Tariff, 20 specifically adopted by the Régie for the 21 native load. You agree? You agree, Mr. 22 Sinclair? 23 R. Yes. 24 Q.24 Okay. Now, I'd like to refer you to our 25 Schedule C-1, the proposed Schedule C-1
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1 Tariff which is point-to-point service in 2 order to be firm? 3 R. My point is that, in that particular 4 quoted passage, my point is that when the 5 QCRND firm is used, it uses up firm ATC. 6 Q.17 Yes. 7 R. So, it creates firm reservation for that 8 service. 9 Q.18 Okay. So, are you saying that this is not 10 allowed under Part IV and consequently 11 these kinds of imports because we are 12 referring to imports... 13 R. Yes. 14 Q.19 ... to serve the native load should be 15 made according to Part II which is a 16 point-to-point firm transmission service 17 arrangement. Is that what you're saying? 18 R. If you want firm network service, you've 19 got a designated resource. 20 Q.20 Okay. And if it's not designated? 21 R. Then, you've got... 22 Q.21 Let's keep the hypothesis that you and I 23 are using, we are in the QCRND 24 environment. 25 R. Yes, we are.	1 which is not far in HQT-4, document 1. If 2 you go to sheet 200 of our proposed OATT, 3 you will find a definition. It's the 4 definition of QCRND firm. 5 So, let me know when you have that. 6 R. I have it. 7 Q.25 Okay. So, let's read that together: 8 « QCRND firm refers to 9 Québec Ressource non 10 désignée, capacity of 11 a resource posted on 12 OASIS but not 13 designated by the 14 Distributor for 15 supplying Québec 16 native load. » 17 That is a proposed definition. You 18 recognize that point? 19 R. Yes. 20 Q.26 Okay. Now, just to make sure we 21 understand, if we remove the word « firm » 22 just a second and we replace that word by, 23 let's say, « Distributor », so it would be 24 QCRND (Distributor) and it reads: 25 « Capacity of a

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1 resource posted on 2 OASIS but not 3 designated by the 4 Distributor for 5 supplying the Québec 6 native load. » 7 I guess the problem disappears. If the 8 word « firm » is removed, and we simply 9 put in brackets, this says « secondary 10 service, the Distributor serves the native 11 load from a non-designated resource », 12 there wouldn't be any issue. It's the 13 word « firm » that creates the problem. 14 You recognize that the Distributor can 15 make arrangements to serve the native load 16 from non-designated resources. We saw 17 that? 18 R. Yes, I see what you're saying. But if you 19 go to sheet 199, about three quarters of 20 the way down, you'll see and I had this on 21 my presentation the other day, that there 22 is an equation ATC firm. 23 Q.27 Yes. 24 9H16 25 R. And you'll see, this is the real-time	1 portion of that examination. Pages 95 and 2 96. It was the examination of monsieur 3 Sylvain Clermont on the notion of 4 secondary service conducted by your 5 counsel, maître André Turmel. 6 So, it's in French, we'll read it 7 together, slowly, so you can get a 8 translation at the same time. It is truly 9 question 124 on page 95. And it was a 10 discussion about what you just referred 11 to. All right, so the question 124, line 12 11 is as follows: 13 « D'accord. O.K. 14 Alors, donc, l'OATT 15 applicable 16 actuellement au Québec 17 que vous connaissez, 18 vous nous l'avez dit 19 plusieurs fois, permet 20 d'approvisionner la 21 charge locale à partir 22 d'un service ferme 23 charge locale QCRD. 24 Si HQT souhaite 25 accorder un service
Page 19	Page 21
1 horizon but it's true on the other 2 horizons too, you want to include in ETC 3 firm, the QCRND firm. You see that it's 4 ETC firm is equal to QCRD, which I 5 explained the other day was legitimate, 6 plus QCRND firm. Then the other ones, the 7 other terms aren't as important. 8 And then, if you go up the page, 9 you'll see that the ATC firm is equal to 10 TTC minus ETC firm. So, what these 11 equations do is allow the QCRND firm to 12 reduce the level of the ATC firm. 13 So, you're allowing the non- 14 designated resources to bump or to 15 displace capacity that would be available 16 to firm uses of the system. 17 And that's what I mean in my 18 discussion, in my testimony, that the 19 designation is operating to provide firm 20 reservation for non-designated resources. 21 Q.28 I understand exactly what you meant, I 22 appreciate that. 23 May I ask you now to take a copy of a 24 transcript, volume 7, hearing of October 25 27, 2010, volume 7. We will show you a	1 ferme à partir d'une 2 ressource non 3 désignée, l'OATT 4 actuel permet au 5 Distributeur de 6 désigner une ressource 7 pour servir la charge 8 locale de ce qui est 9 ferme. Ma question 10 c'est pourquoi le 11 Distributeur 12 utiliserait le service 13 QCRND ferme alors 14 qu'il peut désigner 15 une ressource et 16 utiliser le QCRD? » 17 And then you have Mr. Clermont's response: 18 « L'utilisation 19 typique de 20 l'alimentation de 21 charge locale à partir 22 de ressources non 23 désignée, c'est pour 24 des courtes 25 périodes... pour des

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1 courtes périodes et 2 des choses qui ne 3 pouvaient pas être 4 planifiées à l'avance. 5 Donc, typiquement, là, 6 et c'est l'usage qu'on 7 voit, là, on va voir 8 ça beaucoup en période 9 de pointe. Le 10 Distributeur va 11 ajouter à 12 l'alimentation de sa 13 charge locale à partir 14 de ressources 15 désignées. 16 C'est l'usage typique 17 et c'est donc pas dans 18 l'horizon planifié. 19 On est plus dans un 20 horizon court terme de 21 façon temporaire. » 22 So, that was monsieur Clermont's response 23 to maître Turmel with respect to the use 24 of this QCRND by the Distributor. 25 Would you have any reason to believe	1 Q.31 Yes. 2 R. Yes, I do understand this. 3 Q.32 I would like to refer you to one of our 4 exhibits, it's document HQT-8, document 1, 5 it's a table that was used quite a lot by 6 maître Turmel at one point during an 7 examination. So, I apologize again, we 8 only have a French version but I think you 9 won't have difficulties picking up the 10 information on the table. 11 R. Can you give me the cite again? 12 Q.33 It's HQT-8, document 1, page 17 of 20. 13 It's table 15.1. So, this is part of our 14 proposal. And what you have here is... 15 the title in French is « Priorité 16 d'utilisation des interconnexions ». So, 17 priority with respect to use of 18 interconnections. 19 And on the left column you have 20 exports, and we're not considering exports 21 for native loads so let's only look at the 22 imports, because the native load, by 23 definition, is importing energy for the 24 native loads. 25 And you have six boxes on the right
Page 23	Page 25
1 that from an operational standpoint this 2 position, this statement made by Mr. 3 Clermont would be inaccurate, 4 unreasonable? 5 R. There wasn't anything in there that seemed 6 unreasonable. 7 Q.29 Are you familiar, Mister... because we've 8 talked about firm and non-firm, I would 9 like to change terminology and talk about 10 priority levels. Are you familiar with 11 the priority levels that have been 12 established by the Régie and those 13 proposed by TransÉnergie for the service 14 of the native loads? I'm not referring to 15 firm, non-firm; I'm referring to the 16 priority levels that are established for 17 purposes of classifying transmission 18 rights or from an operational standpoint 19 recognizing transmission rights for the 20 native loads. 21 R. So, do you mean the priority with respect 22 to reservations or with respect to 23 curtailments? 24 Q.30 Exactly. Well both. 25 R. Both?	1 side. The first box refers to native load 2 service from designated resource and long- 3 term firm point-to-point transmission 4 service, one year and above. And that 5 has, let's call it, a priority 1. The 6 second box is firm point-to-point but it's 7 short-term and it has a priority 2. 8 Now, we'll stop at 3 because this is 9 where we are. QCRND from the Distributor. 10 This is what you and I have been 11 discussing for a moment now. This is 12 service of the native load from a non- 13 designated resource and this priority, and 14 this is said here in French, cette 15 priority, this priority can only be 16 exercised by the Distributor. 17 Now, you and I have been discussing 18 this QCRND firm for a moment. Now, my 19 question is as follows. Let's remove the 20 word « firm » and say it's not a QCRND 21 firm or non-firm because this truly is not 22 a discussion for Part IV, Part IV deals 23 with priority. And what I'm suggesting to 24 you is that secondary service to serve 25 native load exercised by the distributor

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1 has a priority level of 3. My question to
2 you is do you find this reasonable, do you
3 find it reasonable that secondary service
4 to serve native load exercised by the
5 Distributor would actually come with a
6 priority level number 3 which is after
7 native load from designated resources,
8 after firm point-to-point short-term, but
9 before, and there you see level 4, before
10 non-firm point-to-point short-term, number
11 5, what we call the re-direct, and number
12 6, which is a different secondary service.
13 Do you find this reasonable?
14 And again, don't tell me if it's firm
15 or non-firm, we're changing terminology.
16 I'm asking you is a level 3 reasonable?
17 R. Well, I think there's some confusion.
18 This table here does set out the proper
19 priorities and has implications or implies
20 that there's these priorities for
21 reserving the transmission capacity. And
22 what I see here is correct, in accordance
23 with Order 890.
24 Q.34 So, you agree with that level 3?
25 R. Yes but there's confusion because when the

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1 Attachment C-1 is applied to these
2 designations, there's a mistake in that
3 the firm ATC reflects reservations made by
4 non-designated resources and that's not
5 proper, because the non-designated
6 resources should only use up non-firm ATC,
7 as I pointed out before.
8 Attachment C-1 still has in it the
9 provision that some designations, some
10 reservations from non-designated resources
11 uses up the firm capacity.
12 And Mr. Clermont also stated during
13 the hearing that this should be treated as
14 non-firm. And I do agree that non-
15 designated resources should be treated as
16 non-firm. But then I think the Attachment
17 C-1 needs to be made consistent with that
18 remark and consistent with this table that
19 you're showing me.
20 Q.35 Could you take section 36 again, 36.3.
21 Keep the table, let's move to section 36.3
22 just to continue our discussion based on
23 your answer. So, if we move back to
24 36.3... so, 36.3 is secondary service,
25 okay, and you just said that this has to

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1 be treated as non-firm?
2 R. It has to take up non-firm capacity.
3 Q.36 Now, I'm suggesting to you that when you
4 look at section 36.3 there's no reference
5 to firm or non-firm. What it says at the
6 end of section 36.3 is the following:
7 « Deliveries from
8 resources other than
9 designated resources
10 shall have... »
11 And I read this with you:
12 « ... shall have a
13 higher priority than
14 non-firm. »
15 So, again, the word that's used is
16 priority. And what it says in 36.3 is
17 that the priority is a higher priority
18 than non-firm, okay?
19 So, that's why, if you look again at
20 the table, number 4, class 4, is short-
21 term non-firm, as well as classes 5 and 6.
22 So, what we have is our priority 3 is a
23 higher priority than the non-firm but a
24 lower priority than other types of firm,
25 like 1 and 2. And 36.3 says: « Do what

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1 you want, call it the way you want, but
2 the priority of that secondary service is
3 higher than non-firm. »
4 Do you agree with the wording of 36.3
5 saying that the priority level is higher
6 than non-firm?
7 R. Yes. 36.3 seems right, the table seems
8 right, what Mr. Clermont said seems right.
9 It's only in the construction of the
10 existing transmission commitments in
11 Attachment C-1 that is wrong.
12 Q.37 So, what you're saying is basically you're
13 in agreement with everything else except
14 that in the equation you would like to
15 remove that reference?
16 R. Yes, it should be moved to the non-firm
17 equation, ATC non-firm.
18 Q.38 Even if the priority is higher than non-
19 firm?
20 R. Well, it would have a higher reservation
21 priority but it would use up non-firm
22 capacity.
23 Q.39 I see what you're saying. Now, were you
24 aware of the fact that what is in this
25 table is nothing new, and in fact, this

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1 table, or at least the first four levels, 2 it was all approved by the Régie sometime 3 ago. Are you aware of that fact? 4 Me ANDRÉ TURMEL : 5 Je vais m'objecter à cette question. Je pense que 6 mon confrère savait très bien que je me lèverais. 7 Je vous réfère à l'engagement - je vais vous 8 l'expliquer là - l'engagement 6 lors du contre- 9 interrogatoire de monsieur Clermont. Monsieur 10 Clermont s'autorisait, en présentant ce tableau dont 11 fait l'objet ici de la discussion, on l'avait 12 interrogé à l'effet de savoir est-ce que la Régie 13 avait autorisé une telle... toutes ces priorités, 14 notamment l'ensemble du tableau qui apparaît à la 15 pièce dont on discute. Et il n'a pas été capable, 16 lors de l'interrogatoire que l'on a fait avec lui, 17 de nous indiquer exactement quel était le passage où 18 la Régie avait autorisé, comme mon confrère le 19 laisse entendre ou essaie d'amener le témoin, où la 20 Régie avait autorisé une telle priorité. Or, on 21 parlait bien de la décision D-2006-066. A 22 l'engagement 6, si vous le prenez, qui a été répondu 23 le 11 novembre 2006, on avait demandé: 24 « Indiquer les 25 passages de la	1 prétention contraire, à tout le moins, et que cette 2 question fera certainement l'objet de 3 représentations en plaidoirie. 4 Me ÉRIC DUNBERRY : 5 Monsieur le Président, je peux retirer la question 6 et la reposer dans deux questions puis vous pourrez, 7 je pense, à ce moment-là, juger de la pertinence de 8 la question. Mais préalablement à poser la 9 question, effectivement, j'allais présenter au 10 témoin une copie de la décision D-2006-66 alors je 11 peux bien retirer la question et y arriver peut-être 12 dans deux questions ce qui permettra peut-être de 13 juger plus en contexte de la question. 14 LE PRÉSIDENT : 15 Très bien. 16 Me ÉRIC DUNBERRY : 17 Q.40 Mr. Sinclair, I would like you to take a 18 copy of a decision that I have for you. 19 It's decision D-2006-66. We only have the 20 table but I'm not going to have a 21 discussion beyond that table and I don't 22 think maître Turmel would object to that. 23 It's just the table that we find on page 24 46. 25 LE PRÉSIDENT :
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1 décision D-2006- 2 066... » 3 Que mon collègue n'a pas encore nommée mais qu'il 4 s'apprêtait à nommer. 5 « ... pertinents à 6 l'alimentation de la 7 charge locale avec une 8 ressource non désignée 9 et le fait que la 10 priorité ne peut être 11 exercée par le 12 Producteur. » 13 Et là il y a une explication. Ce que je veux vous 14 dire, ce que je veux indiquer ici c'est que nulle 15 part, quand on lit la réponse en engagement du 16 témoin Clermont, il n'est clairement indiqué que le 17 tableau dont il est fait l'objet de la discussion 18 ici est clairement adopté tel que l'on discute 19 aujourd'hui. 20 9H31 21 Et bref, ce que je vous dis c'est que 22 c'est un point de droit qu'on pourra plaider mais je 23 ne pense pas à ce stade-ci que mon confrère peut 24 laisser entendre à un témoin qu'une décision a 25 approuvé un tel tableau alors que nous avons une	1 Le numéro de la décision encore? 2 Me ÉRIC DUNBERRY : 3 C'est la D-2006-66, Monsieur le Président, d'avril 4 2006. Et je vais référer le témoin uniquement, et 5 j'ai le tableau ici. Si vous ne l'avez pas, 6 Monsieur le Président, j'ai des copies du tableau. 7 Q.41 So, Mr. Sinclair, this is a decision of 8 this Régie that was rendered in 2006 and 9 it presents a table, Table 4 on page 46 10 that you have now, and again it's in 11 French and as I said earlier, the first 12 four lines or boxes are those of interest. 13 Now, to answer the question of maître 14 Turmel and perhaps give you more guidance, 15 I am considering the third box. The third 16 box deals with the Distributor. The 17 undertaking to which maître Turmel was 18 referring was, with respect to the 19 Producer, HQT Production, whether HQT 20 Production was granted what we see in our 21 Table 15.1 a priority level number 6 which 22 is no priority, that's the bottom of the 23 line. But I'm not referring right now, 24 because we will come to that point 25 eventually but I'm still in this box

Page 46 1 would think that this TSP, this 2 transmission service provider would not do 3 like everybody else and update its ATC 4 values? Why are you assuming... 5 R. No... 6 Q.65 ... that we wouldn't do that? 7 R. No, I didn't say that. 8 Q.66 Okay. Let's come back to the QCRND non- 9 firm. We dealt with the QCRND firm, class 10 3. Let's come back to the QCRND non-firm, 11 page 9 of your report. Now, on page 9, 12 lines 21 and 22, this is what you say, and 13 I quote it. The first line we read 14 already. 15 « Section 36.3 of the 16 revised HQT OATT 17 allows native load to 18 be served from non- 19 designated resources 20 on a non-firm basis 21 using secondary 22 service. This is 23 represented in 24 Attachment C-1 by 25 QCRND non-firm and is	Page 48 1 « This represented in 2 Attachment C-1 by 3 QCRND non-firm and is 4 consistent... » 5 « Is », « is », it's not « is not », it 6 is, is consistent. 7 « ... with pro forma 8 OATT. » 9 Are you changing your report on me now? 10 Are you now saying that this is not 11 consistent? 12 R. I suppose I should qualify that statement, 13 that if it was really treated as non-firm 14 from non-designated resources it would be 15 consistent. However, there is an 16 additional provision in the QCRND non-firm 17 which is objectionable, and that is that 18 it invites the use of Part IV by the 19 Producer. 20 Q.69 Well, I hear what you're saying, we'll get 21 there, but start with the basic. Do you 22 maintain this allegation here? I hope you 23 do because otherwise I may have to come 24 back to other point questions. It is 25 written here that it is consistent. So,
Page 47 1 consistent with the 2 pro forma 890 OATT. » 3 So, I guess you and I, as a starting 4 point, agree that the QCRND non-firm 5 inscription is consistent with FERC? 6 That's what you wrote? 7 R. The non-designated resources should be... 8 non-designated resources serving native 9 load should be using non-firm service. 10 Q.67 So, we agree that QCRND non-firm is 11 consistent with FERC? 12 R. No, I think I point out later, and I 13 certainly point out in my presentation, 14 that the problem with that is there's a 15 permission for the producer to use that... 16 it invites the producer to use Part IV, 17 which is not acceptable from my point of 18 view. 19 Q.68 Where is that, do you... well, let me... I 20 thought you and I... I'm just reading your 21 report, page 9, maybe I'm missing 22 something here. Page 9 of your report... 23 and again, this is the report that you 24 said was accurate yesterday. Now, it is 25 said:	Page 49 1 are you telling me today that it's not 2 consistent? Is it or is it not? That's 3 the simplest question you can ask... 4 R. Yes, I suppose... yes. 5 Q.70 ... is it or is it not consistent? 6 R. Let me clarify. And I admit that perhaps 7 what I wrote here is not completely what I 8 intended to write and that is that QCRND 9 non-firm, as a concept, is consistent, and 10 we talked about that very thoroughly. The 11 QCRND non-firm in Attachment C-1 does not 12 quite satisfy the secondary service 13 concept. 14 Q.71 And could you expand on this, why does it 15 not satisfy? 16 R. Oh yes, it's simple, and I explained in my 17 presentation that the QCRND non-firm is a 18 reservation... represents capacity set 19 aside for the Producer, HQT, to serve 20 native load from non-designated resources. 21 And that is inconsistent with your... 22 well, HQT's own OATT but also inconsistent 23 with the pro forma 890 OATT. 24 Q.72 Now, the QCRND non-firm is to serve the 25 native load, right?

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1 R. Correct. 2 Q.73 The secondary service is to serve the 3 native load, is that correct? 4 R. That's correct. 5 Q.74 The QCRND non-firm is to serve the native 6 load from a non-designated resource, we 7 agree? 8 R. Identified by the Producer. 9 Q.75 And we're saying here that, in this line, 10 that it's non-firm. 11 R. Yes. 12 Q.76 The non-firm part of this equation is 13 agreeable to you? 14 R. Yes. 15 Q.77 Okay. Your point is that it is because it 16 is invoked by the Producer? 17 R. That's correct. 18 Q.78 Now, it is to serve the native load? 19 R. That's correct. It permits the Producer 20 to use up transmission that could be used 21 up by another supplier that would have the 22 opportunity to also supply native load. 23 It favours the Producer as a supplier of 24 economy energy for the native load. 25 Q.79 How many suppliers do you think can serve	1 juridiques, Monsieur le Président. 2 Me ANDRÉ TURMEL : 3 Non, bien... bien, parce que voilà, c'est justement 4 là de quoi qu'on parle. 5 LE PRÉSIDENT : 6 Disons qu'ici la Régie permet la question. La 7 question est quels sont les fournisseurs du 8 distributeur de la charge locale, c'est le sens de 9 la question? 10 Me ÉRIC DUNBERRY : 11 Bien, en fait, la question, je la posais en anglais 12 puis je la traduirais en disant quelle entité 13 alimente la charge locale. Alors, je ne parle pas 14 de fournisseurs d'énergie, je parle de celui... the 15 load-serving entity I guess would be the proper 16 translation. Quelle entité alimente la charge 17 locale? 18 Me ANDRÉ TURMEL : 19 Mais il y a une confusion... O.K., si vous me 20 permettez. Il y a une confusion dans ce que nous 21 dit maître Dunberry là, il mélange deux choses là. 22 Il veut savoir qui distribue, j'imagine que sa 23 question, où il veut vous amener, c'est HQD. Qui 24 fournit HQD, ça peut être bien sûr le héritage ou le 25 post-héritage avec les différents contrats accordés
Page 51	Page 53
1 the Québec native load? 2 R. Well... 3 Q.80 Who else would be favoured or not 4 favoured? I mean, the Québec native 5 load... first of all, who serves the 6 native load in Québec? 7 R. The heritage pool. 8 Q.81 No, I mean the... 9 R. HQP. Basically HQP. 10 Q.82 HQD. « D ». Distribution did you say? 11 R. Oh, who serves it? 12 Q.83 Who serves the native load in Québec? 13 There's an entity serving the native load 14 in Québec. Who serves the native load in 15 Québec? 16 R. Do you mean distributes to or... 17 Me ANDRÉ TURMEL : 18 Je vais faire une objection là-dessus parce que mon 19 confrère dit une entité. Peut-être être précis là, 20 une entité aux États-Unis c'est une société, une 21 compagnie. Est-ce que HQP est une compagnie 22 distincte? Juste peut-être être précis dans vos 23 mots, parce qu'une division ou... parce que... 24 Me ÉRIC DUNBERRY : 25 Bien, justement, je voulais éviter des débats	1 par HQD. Mais donc, mon confrère, je l'invite peut- 2 être à clarifier là sa question. 3 LE PRÉSIDENT : 4 Je pense qu'il faudrait préciser la question, sinon 5 on rentre dans des termes... 6 Me ÉRIC DUNBERRY : 7 Monsieur le Président, la réponse est dans la loi, 8 la réponse est dans le Tarif. Je pense que je peux 9 passer à une autre question plutôt que de faire un 10 débat juridique sur ces définitions-là. 11 LE PRÉSIDENT : 12 Très bien. 13 Me ÉRIC DUNBERRY : 14 La réponse, je pense que tout le monde la connaît la 15 réponse et elle est dans la loi, elle est dans le 16 Tarif, effectivement. 17 Q.84 Well, perhaps I can ask the question, my 18 colleague is suggesting a question, 19 rephrasing it differently to avoid a legal 20 debate here. 21 Do you know what is the identity, the 22 entity, in Québec that has the mandate to 23 serve the Québec native load? 24 R. Well, yes, that's HQD. 25 Q.85 « D », okay.

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1 R. The Distributor. 2 Q.86 And on page 10, you wrote: 3 « Point-to-point 4 service and native 5 load service must be 6 kept mutually 7 exclusive. » 8 Right? 9 R. Yes. 10 Q.87 So, when one is serving the native load, 11 that service is to be governed by Part IV, 12 which is specific to Québec. I understand 13 you're not perhaps as familiar with Part 14 IV but you understand that when it is for 15 purpose of serving the native load, it is 16 to be regulated by Part IV of our Tariff, 17 you know that? 18 R. Yes. 19 Q.88 I think that solves the issue. I would 20 like now to move back to page 31, line 19, 21 of your report. Page 31, line 19. And I 22 quote you, you say: 23 « Any off-system 24 resource also needs to 25 be considered by HQT	1 Q.90 Well, I'm just using the words you're 2 using, you're saying: 3 « Any off-system 4 resource also needs to 5 be considered by 6 HQT... » 7 A. « ... in planning and 8 operating its 9 system. » 10 Q.91 Yes. Are you suggesting that HQT is not 11 considering off-system resources in its 12 planning and operating processes? 13 R. Well, I think there is a... I think that 14 there is a need... HQT... well, for 15 instance, Churchill Falls is off-system 16 and it's treated as on-system. So, I 17 think there needs to be a clear 18 distinction about that. 19 Q.92 We will try to stay away from Churchill 20 Falls for a number of reasons. I know you 21 testified in Churchill Falls and six 22 régisseurs have already expressed their 23 views on this and they may not agree with 24 what you've just said but let's not go 25 there. You're not here to advance the
Page 55	Page 57
1 in planning and 2 operating its 3 system. » 4 And you are referring here to section 37.1 5 that is quoted above, in part. And below 6 you are suggesting that there be in 7 addition of a provision dealing with off- 8 system network resources. 9 So, you read section 37.1 from line 6 10 to 18, then you suggest that off-system 11 resources also need to be considered, and 12 then you suggest some additional language 13 in section 37.1. Is that a fair summary 14 of what we see here? 15 R. Yes. 16 Q.89 Are you under the impression that Hydro- 17 Québec is not considering what you call, 18 and we may not have the same definition, 19 but that we are not considering off-system 20 resources? Are you under the impression 21 that we are not, that TransÉnergie is not 22 considering off-system resources in its 23 planning? 24 10H02 25 R. What do you mean considering?	1 Churchill Falls position. This is no 2 longer the complaint process, Mr. 3 Sinclair. 4 R. No. 5 Q.93 I'm just asking you, we're in the rate 6 case. So, this is not Churchill Falls. 7 We're asking you whether... 8 R. Well, let me just explain it. Just 9 because Churchill Falls has been addressed 10 in previous cases, it doesn't mean it 11 doesn't apply in a tariff case. So, I'm 12 not here just to advance those issues. 13 Q.94 I'm asking you... 14 Me ANDRÉ TURMEL : 15 Il faut le laisser continuer, Maître. C'est votre 16 question, là, et vous l'avez amenée alors on peut 17 laisser continuer l'expert simplement pour expliquer 18 la notion de on and off-system, puis ça m'apparaît 19 simplement correct au moins de ne pas l'interrompre 20 et de le laisser continuer. 21 LE PRÉSIDENT : 22 Je vais permettre la réponse complète de ce que 23 l'expert était en train de dire. Ensuite, on peut 24 continuer. 25 R. Yes, so, with respect to off-system

Page 58 1 resources, what I mean by considering is I 2 mean that they should be considered 3 carefully and accurately. And an off- 4 system resource should be treated as an 5 off-system resource. And in accordance 6 with Order 890, these various elements of 7 description of that resource should be 8 given. This is on lines 24 through 34. 9 And as I explained in my 10 presentation, if that information is 11 provided accurately, then the transmission 12 provider can calculate the ATC accurately. 13 And also, as I pointed out, the Régie can 14 monitor the system accurately. 15 Q.95 Okay. But again, we're in a rate case. 16 So, what I see here, and I read 31 unless 17 you want to change that again, but when I 18 read 31, what you're suggesting is that 19 the wording of Section 37.1 should be 20 expanded to include the following words 21 and then you give additional language. 22 And the reason why you're saying we 23 have to amend Section 37.1, is because 24 off-system resources need to be considered 25 by HQT.	Page 60 1 Q.99 Now, on page 27, you present your views on 2 how these PPAs have to be properly 3 interpreted and you say from pages 8 to 10 4 that: 5 « The primary element 6 of this determination 7 - and the 8 determination you 9 refer to firmness - is 10 the nature of the 11 penalties of the 12 liquidated damages and 13 associated with the 14 interruption. » 15 Is this still your testimony, Mr. 16 Sinclair? 17 R. Yes. 18 Q.100 Now, we said earlier and you agreed that, 19 in Québec, we have special Part IV to deal 20 with native load issues. You remember 21 that? 22 R. Yes. 23 Q.101 Now, perhaps I need not to refer you to 24 our relevant Section 1.41 but you're aware 25 that in the current tariff and in the
Page 59 1 So, my question to you, and again 2 we're in this rate case, so I'm looking at 3 your report in this rate case, are you 4 under the impression that TransÉnergie is 5 not considering off-system resources in 6 its planning and operating processes? 7 R. Yes, I'm of the opinion that they are not 8 properly considered. 9 Q.96 Okay. And you base this on your 10 experience with Churchill Falls? 11 R. Yes, the treatment of Churchill Falls has 12 not been properly handled within the HQ 13 system. 14 Q.97 Okay. I assume you're aware of two 15 decisions rendered by this Board about 16 Churchill Falls? Have you read both 17 decisions? 18 R. Sure. 19 Q.98 Okay. Moving back from that page to pages 20 25 and 28. This is a section where you 21 discuss PPAs and from pages 25 to 28 you 22 present your views on what is a PPA and 23 how these PPAs should be properly 24 designated. Is that correct? 25 R. Yes.	Page 61 1 proposed tariff, a contract may be a 2 designated resource? 3 R. Yes. 4 Q.102 It's already there? 5 R. Yes. 6 Q.103 Okay. 7 LE PRÉSIDENT : 8 Maître Dunberry, juste pour une question 9 d'intendance... 10 Me ÉRIC DUNBERRY : 11 Oui. 12 LE PRÉSIDENT : 13 ... vous aviez annoncé environ une heure et je ne 14 sais pas si vous rentrez dans cette section-là si 15 vous en avez pour très longtemps. 16 Me ÉRIC DUNBERRY : 17 On peut prendre une pause maintenant, Monsieur le 18 Président. 19 LE PRÉSIDENT : 20 Parce que... 21 Me ÉRIC DUNBERRY : 22 Dans 45 minutes j'aurai terminé. 23 LE PRÉSIDENT : 24 C'est surtout pour la planification, d'être certain 25 de pouvoir terminer...

RÉGIE DE L'ÉNERGIE

COPIE

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

DOSSIER : R-3669-2008

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

AUDIENCE DU 9 MAI 2011

VOLUME 27

DENISE TURCOT
sténographe officielle

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1 EN L'AN DEUX MILLE ONZE (2011), ce neuvième (9e) 2 jour du mois de mai, 3 4 LA GREFFIERE : 5 Veuillez prendre place, s'il vous plaît. 6 LE PRÉSIDENT : 7 Bonjour à toutes et à tous. Reprise de l'audience. 8 Madame Guilhermond. 9 LA GREFFIERE : 10 Protocole d'ouverture, audience du 9 mai 2011, 11 dossier R-3669-2008 - Phase 2. Demande relative à 12 la modification des Tarifs et conditions des 13 services de transport d'Hydro-Québec à compter du 14 1er janvier 2009. Poursuite de l'audience. 15 Me PAULE HAMELIN : 16 Bonjour, Monsieur le Président. Juste vous 17 indiquer, comme vous avez pu voir, j'ai transmis les 18 engagements 1 à 14. Et je les ai fait parvenir, 19 certaines copies, à la Régie. Si jamais on avait 20 besoin de d'autres copies, faites-moi signe, on 21 verra à vous en fournir. 22 Je voulais attirer votre attention sur le 23 fait que dans l'engagement numéro 14, qui est la 24 traduction, on l'a appelé « draft translation », 25 j'attire votre attention sur le fait qu'il y a une	1 customer. » 2 Je vous fais grâce des coquilles, naturellement 3 c'est un rough translation. 4 LE PRÉSIDENT : 5 Hum-hum. 6 Me PAULE HAMELIN : 7 Mes collègues, dans le contexte du contre- 8 interrogatoire de NLH, vous ont soumis la décision 9 D-2002-260; c'est la pièce B-228. Je me suis 10 aperçue qu'il manquait plusieurs pages à cette 11 décision-là. Alors, j'apprécierais qu'on nous 12 fournisse une copie complète de la décision 13 puisqu'on parle d'un dossier de plainte, alors vu 14 que ce n'est pas toujours facile d'avoir copie de 15 ces documents-là. Alors, si c'était possible 16 d'avoir la copie complète, parce que ce n'est pas 17 une décision qui est complète. 18 LE PRÉSIDENT : 19 Vous dites la pièce B-200? 20 Me PAULE HAMELIN : 21 B-228. 22 LE PRÉSIDENT : 23 228. 24 Me PAULE HAMELIN : 25 Qui était la décision D-2002-260.
Page 7	Page 9
1 erreur dans la citation relativement à l'article 2 2.2. A la page 13, si vous descendez à la dixième 3 ligne, on devrait lire... 4 LE PRÉSIDENT : 5 Quel paragraphe, s'il vous plaît? 6 Me PAULE HAMELIN : 7 Dans la citation de l'article 2.2. Est-ce que ça 8 va? 9 LE PRÉSIDENT : 10 Très bien. 11 Me PAULE HAMELIN : 12 On lit: 13 « By a new eligible 14 customer. » 15 Et en fonction du tarif alors en vigueur, on devrait 16 lire: 17 « By an eligible 18 customer. » 19 Et la même citation se retrouve à la page 21, dans 20 le paragraphe 79. Alors, c'est la même correction, 21 on aurait dû lire: 22 « By an eligible 23 customer. » 24 Et non pas: 25 « A new eligible	1 LE PRÉSIDENT : 2 Merci. 3 Me PAULE HAMELIN : 4 Je vous remercie. 5 LE PRÉSIDENT : 6 Alors, quelques questions d'intendance. Concernant 7 les réponses de NLH aux engagements qui ont été 8 pris, ils ont été reçus sauf pour les engagements 9 pris les 3, 4 et 5 mai. 10 Maintenant, concernant le traitement de 11 l'objection du Transporteur à la réponse à 12 l'engagement numéro 2 de UC-RNCREQ, la Régie prévoit 13 tenir, entendre les parties le mercredi prochain le 14 11 mai, à 9 h 00, si nous avons terminé avec le 15 présent panel. Sinon, à la suite de l'audition du 16 présent panel. Et ceci termine les remarques 17 préliminaires de la Régie pour aujourd'hui. La 18 Régie ne prévoit pas rendre sa décision dès 19 aujourd'hui concernant le débat tenu la semaine 20 dernière avec maître Turnel et NLH. 21 Me ANDRÉ TURMEL : 22 C'était ma question, Monsieur le Président, que je 23 venais vous poser. Bonjour. 24 LE PRÉSIDENT : 25 Bonjour.

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1 Me ANDRÉ TURMEL : 2 Donc, André Turmel pour NLH. J'ai bien pris note 3 des commentaires de ma consoeur maître Hamelin pour 4 la pièce B-228. Effectivement, c'est un point 5 correct, la décision sera déposée au complet par mes 6 confrères. 7 Sur l'engagement 2 UC-RNCREQ, vous 8 prévoyez un débat le 11 mai. J'annonce 9 immédiatement que nous serons présents et nous 10 ferons vraisemblablement faire valoir des droits 11 également à l'égard de ce point, qui nous intéresse 12 et qui concerne tous les intervenants. 13 Je comprends que quant au débat sur 14 l'engagement 16, vous nous dites que ça ne sera pas 15 rendu aujourd'hui. Je comprends que ce sera plus 16 tard cette semaine. Je vous remercie. 17 LE PRÉSIDENT : 18 Concernant la demande de déposer la décision 19 complète, maître Dunberry, est-ce qu'il y a un... 20 pour la pièce B-228? 21 Me ÉRIC DUNBERRY : 22 Monsieur le Président, je présume que c'est déjà 23 dans le pipeline en quelque part. Merci. 24 LE PRÉSIDENT : 25 Très bien, merci. Alors, nous en étions à continuer	1 aux engagements numéros 10 à 14. So, this 2 is your client's response to Undertakings 3 number 10 to 14. And I was referring to 4 Undertaking number 10 which is the first 5 undertaking for purposes of our discussion 6 and it deals with your mandate. 7 So, I would like to ask you to take a 8 copy of that document that was attached to 9 your response. It's a redacted version of 10 an agreement that defines the scope of 11 your mandate. 12 And it is said in the first 13 paragraph, and I will quote this: 14 « This is an agreement 15 between Brookfield 16 Énergie Marketing inc. 17 and Boston Pacific 18 Company through which 19 Boston Pacific will 20 provide services as an 21 independent expert in 22 support of Énergie 23 Brookfield Marketing 24 Inc. Complaint and 25 Rate Case Proceeding.
Page 11	Page 13
1 l'interrogatoire du présent panel. Je crois que 2 c'était maître Dunberry qui interrogeait. 3 9H10 4 PANEL EBM 5 CONTRE-INTERROGÉS PAR Me ÉRIC DUNBERRY : 6 Bonjour, Monsieur le Président. Bonjour Madame, 7 Monsieur les régisseurs. Good morning, Mr. Roach. 8 M. CRAIG R. ROACH : 9 Good morning. 10 Me ÉRIC DUNBERRY : 11 We are going to continue your cross-examination this 12 morning, more or less exactly where we left it 13 sometime ago. 14 Q.1 So I would ask you to take a copy of your 15 report, a copy of your PowerPoint 16 presentation and I will be referring you 17 as well, as I did before, to your evidence 18 filed in the BCTC case as well. 19 But before we go there, I would like 20 to ask you one simple question concerning 21 one of the documents that we received from 22 your counsel on May the 6th, 2011. It's 23 in respect of your mandate. 24 If you take a copy of a document 25 called Réponse d'Énergie Brookfield EBM	1 This agreement covers 2 work performed by 3 Boston Pacific for 4 Brookfield commencing 5 March 8th, 2010 6 through anticipated 7 completion of the 8 project by June 9 2011. » 10 So, the project to which you refer is both 11 the complaint case and the rate case 12 proceeding. Is that correct? 13 R. Yes. 14 Q.2 And you signed one agreement for both 15 proceedings. Is that correct? 16 R. Yes. 17 Q.3 Thank you. I'd like now to move back to 18 your report on page 17, paragraph 33. And 19 this is where we left it last time. This 20 paragraph, and I invite you to read all of 21 it, but the last line is the one I will be 22 referring you to is, and I quote: 23 « In sum, HQT fails to 24 state the problem its 25 harmonization solution

Page 14	Page 16
1 is intended to 2 solve. » 3 And this relates back to your previous 4 testimony to the effect that harmonization 5 is a remedy to a problem and in this case 6 HQT fails to solve a problem. 7 Me PAULE HAMELIN : 8 Monsieur le Président, je veux juste, et je 9 m'objecte, là, parce qu'il a dit, il a paraphrasé 10 l'expert et on ne reprendra pas tout ce que l'on a 11 fait comme débat la dernière fois. C'était son 12 argument que monsieur Roach faisait référence à un 13 remedy dans le contexte d'une plainte versus une 14 cause tarifaire. 15 Alors, je ne veux pas rentrer dans le 16 débat et quand il paraphrase l'expert, il dit: To 17 remedy a problem, là, on va faire référence à ce 18 moment-là aux notes précises parce que je ne veux 19 pas qu'on commence à faire un exercice de résumé 20 grossier et large d'une journée d'audience. 21 Me ÉRIC DUNBERRY : 22 Alors, Monsieur le Président, je vais retirer le mot 23 « remedy » pour simplifier les choses and I will use 24 the word « solution ». 25 Q.4 So, Mr. Roach, this goes back to our	1 the actual written submission, on page 3 2 under the title Summary, starting at line 3 21, you summarize your views on the issue 4 that was addressed before and you say: 5 « Above you suggested 6 the two best sources 7 for determining a FERC 8 policy. » 9 Did you review these for purposes of your 10 testimony? 11 R. Yes. 12 Q.7 « How would you 13 summarize what you 14 found in the FERC 890 15 Orders? » 16 And your answer is on the following page, 17 lines 1 to 5, and I quote: 18 « After reviewing 19 Order 890, 890-A, B 20 and C, it is evident 21 that FERC requires the 22 system conditions of 23 adjoining areas to be 24 accounted for when 25 calculating the amount
Page 15	Page 17
1 previous discussion where you took the 2 position - and again I am not referring 3 you to any specific wording but to the 4 general concept - that according to your 5 previous testimony, harmonization is a 6 solution, and I use that word because this 7 is your word here in paragraph 33, is a 8 solution to a problem. This is the 9 position you advanced in this rate case, 10 Phase 2, is that correct? 11 R. It is and more simply, it's saying that in 12 proposing harmonization with a significant 13 change in ATC, there should be a stated 14 purpose. 15 Q.5 I'd like to refer you back to your 16 testimony in the BC case. This was an 17 exhibit we saw before, I believe it's 18 Schedule 6 or Annex 6 to Exhibit C-6-61, I 19 believe, it's your rebuttal evidence in 20 the BCTC case. Now, you have that? 21 R. I do. 22 Q.6 I would like to... we'll take just the 23 time it takes to get there, and I'd like 24 to refer you back to page 3 of the 25 transcript that... not the transcript but	1 of transfer capability 2 that is available 3 between two systems, 4 that is when 5 calculating firm ATC. 6 Later in this 7 testimony, I'll 8 support the issue with 9 direct quotes from 10 FERC 890 Orders. » 11 I assume that you remain of the view that 12 this is a fair summary of the content of 13 the FERC 890 Orders? 14 R. Yes, I've said several times now, I have 15 no problem with the concept. I'm simply 16 pointing out that any regulator, including 17 FERC, would not want there to be harmful 18 consequences in implementing that concept. 19 Q.8 Okay. You will agree with me, I assume, 20 Mr. Roach, that it is generally the 21 transmission service providers that 22 calculate and pose ATC values on 23 interties? 24 R. Yes, as a matter of operation. 25 Q.9 Yes. And you will understand with me that

Page 18	Page 20
1 in fact there is an obligation made to the 2 transmission provider to calculate and 3 post ATC values on interties and to keep 4 these values updated as time goes by. Is 5 that correct? 6 R. Yes, yes. 7 Q.10 And, in fact, this obligation to calculate 8 and post ATC is a continuous obligation 9 when events occur, when circumstances 10 change, the transmission service provider 11 has, as a continuous obligation, the duty 12 to update and post current ATC values for 13 the market. Is that correct? 14 R. Yes, and along with the duty not to do 15 things that are anti-competitive or that 16 are needlessly harmful. 17 Q.11 So, in that summary, when you refer to the 18 word « when », you use the word « when » 19 in line 3, what you're saying is that this 20 obligation to take into account adjoining 21 areas or system conditions in adjoining 22 areas, when calculating the amount 23 transfer capability that is available 24 between two systems, that is when 25 calculating the ATC, this notion of	1 transmission providers 2 that have a tariff 3 based on the pro forma 4 OATT such as BCTC and 5 transmission providers 6 operating a pool 7 system such as in 8 Alberta. » 9 I again assume that you are in agreement 10 with that previous statement that this 11 obligation covers all interties, all or 12 any, actually any interties or 13 neighbouring interties? 14 R. Yes. 15 Q.13 Now, if we move to page 19 of that 16 rebuttal evidence, page 19, line 19, this 17 was a question asking you whether you had 18 reviewed the service provider's response 19 to a number of information requests and 20 you said yes and your answer is as 21 follows, and I quote from line 20: 22 « Yes, I reviewed some 23 of those relevant to 24 the FERC policy issue 25 addressed in my
Page 19	Page 21
1 considering system conditions on the 2 neighbouring system is something that you 3 implement when the transmission service 4 provider calculates the ATC value as often 5 as it does, I assume? 6 R. That's where it will be taken account of. 7 I'm not sure that when is the word I would 8 draw attention to, but I don't have any 9 trouble with addressing the issue of 10 taking into account adjoining territories 11 at the time you calculate ATC calculations 12 or as you calculate ATC. 13 Q.12 Now, I refer to page 7 of your rebuttal 14 evidence, always in the same BCTC case and 15 I'd like to read line 14 to 17. And you 16 refer to a statement made by FERC and you 17 say, and I quote: 18 « Note too that in the 19 quoted above, FERC 20 states that this is 21 applicable to any 22 neighbouring 23 transmission 24 providers. This would 25 presumably include	1 testimony. 2 Would you like to 3 comment on some of 4 them? 5 Yes. There are three 6 that I would like to 7 respond to. 8 What is the first of 9 these three? » 10 Page 20, line 1: 11 « The first of the 12 three is BCTC's 13 response to 14 information request 15 2.11.1 from BCUC - 16 that is the Utility 17 Commission, that is 18 the Board - the 19 question asks BCTC to 20 respond to TCE's claim 21 that BCTC fails to 22 take into account 23 conditions on 24 neighbouring systems 25 when calculating the

Page 22

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

Page 23

1 adjust the RTM. Is that correct?
2 R. That's my understanding, yes.
3 Q.14 Yes.
4 «How would you
5 respond?»
6 So this is your answer.
7 «I would respond by
8 saying that BCTC is
9 addressing the wrong
10 question.»
11 BCTC in our case would be TransÉnergie, is
12 that correct?
13 R. Correct.
14 Q.15 «So, BCTC is
15 addressing the
16 question of how - and
17 you underline how -
18 FERC might want a
19 transmission provider
20 to reflect conditions
21 on neighbouring
22 systems not whether
23 FERC wants those
24 conditions to be
25 reflected as to

Page 24

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

Page 25

1 since FERC did not
2 give pinpointed advice
3 on how the situation
4 at hand might be
5 reflected in TRM or in
6 TTC this somehow
7 undermines the
8 fundamental principle
9 set out by FERC in
10 890. BCTC's logic is
11 not convincing.»
12 Again, I assume you are in agreement with
13 the statement you made before the Utility
14 Commission in the TCE case? You're still
15 agreeing with that statement, Mr. Roach?
16 R. Of course and again, in the end, the
17 British Columbia Utility Commission did
18 agree with what we argued and saw harm and
19 remedied it in a fashion that didn't
20 violate the contract. So, I like this
21 decision. It very much supports what I
22 say and it very much gives clean answers
23 to the four questions I raise.
24 Q.16 Now that statement we just read, I assume,
25 you would agree if the Régie agreed in

Page 26	Page 28
1 this decision that this statement is 2 applicable to this Phase 2 case hearing? 3 R. I don't know what applicable means. I 4 mean, it's what I said. I agree with it 5 today as I agreed with it when I wrote it 6 and again, the British Columbia Order, 7 that decision I think is very helpful 8 here. 9 Q.17 I think we agree on that as well. 10 R. That's good news. 11 9H26 12 Q.18 Your testimony in this case, Mr. Roach - 13 okay, that has been covered, thank you. 14 I would like to now ask you a few 15 questions about what you call your third 16 crucial question, so we could perhaps go 17 back to paragraph 19. And in paragraph 19 18 you say the following. 19 Me PAULE HAMELIN : 20 Du rapport? 21 Me ÉRIC DUNBERRY : 22 Du rapport, oui. 23 Q.19 « It would not be 24 sufficient for the 25 Régie to approve	1 answered before the actual approval to 2 Schedule C-1 could be approved by the 3 Régie. That is what you're suggesting, is 4 that correct? 5 R. Yes. Yes. There are four questions, 6 those are two of them. 7 Q.22 And that process would need this Board to 8 review the situation, factual situation on 9 each intertie connecting Québec with other 10 neighbouring systems, is that correct? 11 R. It would, but the same Attachment C-1 12 could be used. It's not a difference in 13 the policy or the standard, it just could 14 be a difference in the application of that 15 policy per se. 16 Q.23 And there would need to be a review of the 17 factual situation on each intertie before 18 this Régie, at the end of this rate case, 19 could make a determination? 20 R. Now, if... yes, if... 21 Q.24 Yes, it's a yes? 22 R. Yes, if there are consequences as 23 significant as there were on the Québec- 24 New England intertie, then surely this 25 Régie would want to look at the facts and
Page 27	Page 29
1 amendments like C-1. » 2 You're referring to the proposed amendment 3 to Schedule C-1 that TransÉnergie is 4 suggesting? 5 R. Correct. 6 Q.20 « The Régie also 7 should assess the 8 impact of those 9 amendments on 10 transmission customers 11 and determine how to 12 approach the ATC 13 reduction. » 14 Do you still agree with this statement, 15 Mr. Roach? 16 R. Yes. 17 Q.21 So, essentially, you're saying that before 18 this Régie can, in this case, approve the 19 proposed modifications made to Schedule C- 20 1, it would have to allocate... well, 21 first, it would have to determine the 22 proper level of ATC required by 23 harmonization and then justify an 24 allocation of the remaining ATC. 25 That would be two questions to be	1 look at those consequences. 2 Q.25 Do you know how many interties we have 3 between Québec and neighbouring markets? 4 R. There are several, I don't know the total. 5 Q.26 Do you know how many DC interties we have 6 between Québec Interconnection and 7 neighbouring markets? 8 Me PAULE HAMELIN : 9 Monsieur le Président, toutes ces questions-là ont 10 été posées la dernière fois, j'y vais de mémoire, je 11 pourrais vous donner la cote. Mais tout ça, ça a 12 été posé la dernière fois. 13 Me ÉRIC DUNBERRY : 14 Ça a été posé à monsieur Sinclair, Monsieur le 15 Président; ça n'a pas été posé à monsieur Roach. 16 Me PAULE HAMELIN : 17 Écoutez, j'ai revu les notes hier. En tout cas, je 18 suis pas mal certaine que ça a été posé. 19 Me ERIC DUNBERRY : 20 Monsieur le Président, je ne vois pas... nous avons 21 malheureusement... d'abord, je ne suis pas vraiment 22 en accord avec la représentation faite, mais encore 23 une fois, compte tenu du fait que le contre- 24 interrogatoire de monsieur Roach a été coupé, ce 25 sont des questions introductives qui mènent à autre

Page 30	Page 32
1 chose. Donc, si le témoin peut simplement répondre, 2 ce sera plus efficace je pense. 3 LE PRÉSIDENT : 4 On peut avancer. 5 Me ÉRIC DUNBERRY : 6 Q.27 So, Mr. Roach, do you know how many DC 7 interties exist between Québec and its 8 neighbouring markets? 9 R. I don't know the exact number. You know, 10 I would think five or six, something in 11 that neighbourhood, but I don't know the 12 exact number. 13 Q.28 Do you know whether the July 2009 14 coordination covered all these interties, 15 all the DC interties, or was it a partial 16 ATC coordination? Do you know if it 17 covered all the interties or not? 18 R. I presume it covered all interties. I 19 didn't see a distinction but I think it 20 was just a general policy. And again, I 21 have no problem with the general policy as 22 long as the implementation is done to look 23 for answers to the four questions I raise. 24 Q.29 So, is it fair to say that you did not 25 personally conduct a review of the factual	1 calculates its transfer capability. But 2 that's really what I've done in that 3 regard. 4 Q.31 So, do you know what was the posted firm 5 ATC on the Québec side of the HQT-MASS 6 intertie prior to harmonization, would you 7 be able to tell us? 8 R. No, I wouldn't be able to tell you. 9 Q.32 No. Would you be able to tell us what was 10 the firm ATC value posted on the Québec 11 side of the HQT-MASS intertie after 12 harmonization in July 2009? 13 R. No, I didn't look at it. 14 Q.33 Would you be able to tell us what was the 15 ATC value posted on the American side of 16 the HQT-MASS intertie before and after 17 coordination? 18 R. No. Again, I didn't look it up. HQT did 19 not present any information on it as far 20 as I can see in this proceeding. I teed 21 up the New England-Québec line because I 22 knew harmonization had caused harm there 23 and so that's why I use it as an example. 24 Q.34 If I ask you the same exact questions 25 concerning the HQT-Dennison intertie,
Page 31	Page 33
1 situations relevant to each intertie 2 connecting Québec with other neighbouring 3 markets? You did not perform such a 4 personal analysis of the factual 5 situation? 6 R. No, nor did I see that HQT put that in the 7 record. 8 Me PAULE HAMELIN : 9 Monsieur le Président, cette question-là a été posée 10 et l'expert a même référé à certaines minutes et 11 données confidentielles qu'il avaient consultées. 12 Alors, je voulais juste donner cette précision. 13 Me ÉRIC DUNBERRY : 14 Q.30 Mr. Roach, concerning the HQT-MASS 15 intertie - you know what is the HQT-MASS 16 intertie? Do you know where it is, do you 17 know anything about the HQT-MASS intertie? 18 R. I don't recall that particular name for 19 it. As Ms. Hamelin mentioned, I did 20 review confidential records on discussions 21 with both New England ISO and I believe 22 the New York ISO. I see that the New 23 England ISO has said that it's not going 24 to, on any of its interties, seek 25 consistency, seek to change how it	1 would your answer be the same as those you 2 just gave me for the HQT-MASS intertie? 3 R. Yes. Again, I used Québec-New England 4 because it was a good example, a detailed 5 example of the consequences of 6 harmonization. And I did not seek to look 7 at the other interties. And again, HQT, 8 as far as I understand, did not provide 9 any evidence here with these before and 10 after ATCs or any other evidence. 11 Q.35 If I ask the question concerning the HQT- 12 New Brunswick intertie, would your answer 13 be the same as those you gave me 14 concerning the HQT-MASS intertie? 15 R. It would be the same again. 16 Q.36 If I ask you the question concerning the 17 HQT-Ontario intertie... 18 LE PRÉSIDENT : 19 Est-ce qu'il y aurait moyen de rassembler le reste 20 des questions peut-être parce que là... 21 Me ÉRIC DUNBERRY : 22 C'est la dernière, Monsieur le Président... 23 LE PRÉSIDENT : 24 Oui? 25 Me ÉRIC DUNBERRY :

Page 34 1 ... parce qu'elles ne s'en vont pas toutes au même 2 endroit. 3 LE PRÉSIDENT : 4 Parce que le témoin semble avoir répondu. 5 Me ÉRIC DUNBERRY : 6 Q.37 So, if I ask you the same question... 7 It's the last question, Monsieur le 8 Président. 9 ... concerning the HQT-Ontario 10 intertie, your answer would be the same? 11 R. It would be the same. And it would be the 12 same about HQT itself in providing 13 evidence. 14 Q.38 Now, you just said that HQT failed to 15 provide factual evidence concerning the 16 July 2009 ATC harmonization and this is 17 why you were not able to review any of 18 that information, is that correct? 19 R. What I said was that... you're asking me 20 for the same kind of information I had on 21 the Québec-New England intertie and all 22 these other interties and I said I didn't 23 provide that, nor did I believe that that 24 same information, certainly not the detail 25 that I had on Québec-New England, was	Page 36 1 Q.40 Now, is it not your position, because it's 2 certainly not TransÉnergie's position, but 3 is it not your position that it is for the 4 Régie to have a full evidentiary factual 5 record? I think you say that in paragraph 6 14 of your report. You say that this 7 Régie needs a full record in this rate 8 case. Now, your position, Mr. Roach, 9 because this is your position, it's not 10 ours, it's yours, your position is to say 11 that there is a need for a full record in 12 this rate case. Now, when you saw that 13 Hydro-Québec did not feel relevant to 14 produce all that factual information 15 concerning all its interties, why did you 16 not do what you say is required in this 17 rate case and file the information you 18 feel is relevant to make the determination 19 you're asking this Régie to make? 20 Me PAULE HAMELIN : 21 Je vais m'objecter encore une fois, Monsieur le 22 Président. Il a déjà répondu à la question. D'une 23 part, c'est HQT qui fournit une preuve, qui a un 24 fardeau de preuve. Si en réponse on considère que 25 HQT n'a pas rempli son fardeau de preuve et qu'on
Page 35 1 provided by HQT. 2 Q.39 Now, what prevented you from going on 3 these OASIS sites and reviewing the public 4 data available to you, I, and whoever 5 wants to access an OASIS and see, or ask 6 your client to actually provide you with 7 the data that you allege HQT failed to 8 provide in the context of this case? What 9 prevented you from conducting your own 10 analysis? 11 R. Nothing prevented me from conducting my 12 own analysis. It was a matter of that 13 analysis being necessary. I think that 14 our analysis of the Québec-New England 15 intertie, especially after the Régie's 16 decision in the complaint case, was 17 sufficient to really illustrate, to 18 document, to show the sense of the 19 approach I'm proposing which is to ask 20 those four questions. Along with the 21 British Columbia case which is another 22 great case. 23 So, nothing prevented me but I think 24 we have a very strong case based on those 25 two cases.	Page 37 1 donne un exemple, on n'a pas besoin d'aller plus 2 loin. Alors, je vous soumetts que le reste se 3 plaidera en argumentation. Et je considère que, de 4 toute façon, la réponse a déjà été donnée. Mon 5 collègue argumente avec le témoin. 6 Me ÉRIC DUNBERRY : 7 Monsieur le Président, avec respect, je dirais que 8 c'est le procureur de NLH qui argumente sur des 9 questions de fardeau. Pardon, de Brookfield. 10 Le témoin expert représente à la Cour, 11 représente à la Régie, qu'il aurait été nécessaire 12 de présenter un dossier de faits complet, a full 13 record, devant vous dans le cadre de la Phase 2. Il 14 affirme que vous avez besoin de cette information- 15 là. 16 On vient de réaliser avec lui qu'il n'a ni 17 analysé, ni obtenu copie de l'information qu'il dit 18 pertinente. Je lui demande pourquoi. 19 Je pense que je peux demander à un expert 20 qui dit à la fois qu'une information est essentielle 21 et qui dit qu'il ne l'a pas considérée pertinente 22 pour la réviser, pourquoi ne l'a-t-il pas obtenue? 23 J'ai cru comprendre que sa réponse c'est 24 parce que c'était à nous de le faire mais je veux 25 quand même voir s'il y a d'autres options à la

Page 38 1 réponse qu'il nous fournit. 2 Alors, je lui demande simplement pour 3 quelle raison n'a-t-il pas offert à la Régie les 4 faits et les analyses au soutien de ses conclusions. 5 Il me semble que c'est assez crucial comme question, 6 pour reprendre le terme du témoin. 7 LE PRÉSIDENT : 8 En réplique, Maître Hamelin? 9 Me PAULE HAMELIN : 10 Mon collègue dans sa contestation de mon objection 11 vous a dit justement la réponse que l'expert a 12 donnée, il a lui-même répondu à la question qu'il a 13 déjà posée à l'expert... 14 Me ÉRIC DUNBERRY : 15 Oui mais... 16 Me PAULE HAMELIN : 17 ... il l'a dit dans son argumentation. Alors, la 18 question a été posée et répondue. 19 Me ÉRIC DUNBERRY : 20 Monsieur le Président, si la réponse de l'expert... 21 oui? 22 LE PRÉSIDENT : 23 Alors, la Régie ne retient pas l'objection et permet 24 à maître Dunberry de conclure sur cette question. 25 Me ÉRIC DUNBERRY :	Page 40 1 Q.42 Let's spend a moment now with the 2 consequences of what you... well, you call 3 the consequences of this ATC harmonization 4 or of ATC harmonization itself except for 5 the only case you looked at which is HQT- 6 NE, New England. Do you know whether the 7 posted ATC values on the Québec side of 8 any interties, of any DC interties with 9 the United States, exceeded after 10 harmonization the existing transmission's 11 commitment, the firm existing 12 transmission's commitment, import or 13 export, on any of these interties? 14 In other words, was the ATC inferior, 15 superior or equal to the ETC, with an E, 16 like existing, transmission commitment, 17 did you do that comparison between the ATC 18 and ETC values? 19 R. No, again, you asked me this for every 20 intertie, did I do an analysis of those? 21 I did not. Again, I did not think it was 22 my place to do that and it's for HQT to 23 provide that if it wants to support its 24 harmonization plan. 25 Q.43 Now, would you agree with me that in cases
Page 39 1 Q.41 So, Mr. Roach, the question again is since 2 you allege that it is essential for this 3 Régie in this rate case to have a full 4 record, why did you not complete the 5 record and analyze the data for each 6 intertie? 7 R. Yes, I have to agree with Ms. Hamelin, I 8 don't see that it is my place to create 9 that record. If that record is not 10 created here, what fails, what lacks 11 credibility or what is unproven is HQT's 12 harmonization plan, not my testimony. 13 What I hoped I illustrated in practical 14 terms were the consequences of their 15 application of that harmonization proposal 16 to the Québec-New England tie. And what I 17 hoped with the British Columbia case was 18 to show us another Commission faced with a 19 similar deliberation answering those four 20 questions. 21 So, I didn't do it because I didn't 22 think it was my place. The lawyers would 23 say: It's not my burden or Brookfield's 24 burden and I would agree with that. 25 9H41	Page 41 1 where the ATC value after harmonization is 2 equal or greater than the total firm 3 reserve capacity, including renewal 4 rights, there would be no need to consider 5 the impact or an allocation of ATC in 6 cases where the ATC exceeds, after 7 harmonization, the ETC value? 8 There would be enough space for 9 everyone, simply said? 10 R. Yes, I think that I wouldn't use the word 11 « need ». I'd say that clearly that would 12 not raise the spectre of harm as it does, 13 as the harmonization did for Québec-New 14 England. I'm not saying that it shouldn't 15 be considered, but it seems that it 16 wouldn't raise the issue of harm at that 17 point. 18 Q.44 Now, in your presentation, and I would ask 19 you to take a copy of your presentation, 20 the last page I believe, page 16, yes, it 21 is page 16, this is your section on 22 Commercial and Competitive Harm. The 23 second point refers to perceptions, page 24 16, that there is a perception or 25 perceptions that HQ - I assume you mean

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1 TransÉnergie? Are you meaning 2 TransÉnergie? 3 R. No, I mean HQ, I mean the whole set of 4 affiliates. 5 Q.45 All right. So: 6 « HQ, Hydro-Québec 7 including all its 8 divisions, pushes 9 competitors aside. » 10 That is, you believe, a perception that 11 could flow from your review of the 12 situation on one intertie. I believe, the 13 HQT-NE intertie, you have not considered 14 the others. Is that correct? That is the 15 perception that you have, Mr. Roach? 16 R. I think it clearly could be. What 17 happened was HQT took action to reduce 18 ATC. It reduced it and then it allocated 19 all remaining ATC to its affiliates, I 20 think. I'm not saying, not charging 21 anyone with anti-competitive action, but I 22 think the perception that it was anti- 23 competitive is a real possibility. 24 Q.46 And in the notes... and in the notes, 25 volume 20, because you testified on this	1 transmission customers in relation to the 2 July 2009 ATC coordination? 3 R. I'm only familiar with the Brookfield 4 complaint. 5 Q.48 Except for the HQT New England intertie, 6 do you personally know whether the July 7 2009 ATC coordination created any ATC 8 allocation issues between TransÉnergie or 9 between existing customers and other 10 customers on any of the interties? 11 R. Again, I don't know because I didn't think 12 it was my place or my client's burden to 13 make those assessments of other interties. 14 Q.49 So, except for the one Brookfield case and 15 the HQT, and the New England intertie, it 16 is fair to say that today you have no 17 personal knowledge of any complaint or any 18 ATC allocation issues on any interties 19 following the July 2009 coordination 20 initiative? 21 Me PAULE HAMELIN : 22 Monsieur le Président, combien de fois on va 23 remettre la même question dans les permutations 24 possibles? Je pense qu'il a fait le point, là, et 25 l'expert a répondu la raison pour laquelle il a fait
Page 43	Page 45
1 as well, if I may refer you to the 2 transcript of your previous testimony, 3 it's volume 20 on page 61, I believe, page 4 61, line 228, you take the following 5 position and this is in your main 6 presentation, and I quote: 7 « I wanted to make a 8 point that, you know, 9 I've been talking 10 about tariff language 11 and I wanted to make 12 clear that it's not. 13 This is not just about 14 tariff language. This 15 is about the potential 16 for real harm and I'm 17 concerned about both 18 commercial and 19 competitive harm. » 20 So, would you still today endorse that 21 statement, Mr. Roach? 22 R. Yes. 23 Q.47 Except for Brookfield, do you know 24 personally whether any other complaints 25 were filed before the Régie by any other	1 son rapport de cette façon. 2 Me ÉRIC DUNBERRY : 3 Monsieur le Président, je ne vois pas là un motif 4 d'objection. Je vois là simplement une 5 interruption. J'ai posé la question en relation 6 avec certaines plaintes. J'ai posé la question à 7 l'égard des questions reliées à l'ATC. Là, je pose 8 des questions plus largement relativement à la 9 coordination. Chacun de ces termes-là a un sens 10 différent. La location c'est différent de la 11 réduction puis c'est différent de l'harmonisation 12 selon l'expert. Il faut diviser ça en quatre 13 questions. 14 Alors, ma consœur peut-être n'entend pas 15 les distinctions qui sont faites dans les questions 16 mais elles sont là, Monsieur le Président. Alors, 17 je demanderais simplement au témoin de répondre. 18 LE PRÉSIDENT : 19 Vous pouvez poursuivre pour l'instant. 20 R. Again, same answer. I didn't look at 21 other interties, so I don't have the 22 answer to that question. I really believe 23 that the Brookfield case is certainly 24 sufficient to justify what I've said, what 25 I've recommended and the British Columbia

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1 cases had its usefulness.
2 Me ÉRIC DUNBERRY :
3 Q.50 So, if I get it, Mr. Roach, your entire
4 testimony with respect to potential harm
5 perceptions of pushing competitors aside,
6 perceptions that this could cause real
7 harm, as you say here, it is all based on
8 what you have been told by Brookfield in
9 the context of the Brookfield complaint.
10 Is that fair?
11 Me PAULE HAMELIN :
12 Encore, là, il vient dire que ce que Brookfield lui
13 a dit. Alors...
14 Me ÉRIC DUNBERRY :
15 Oui, Monsieur le Président, parce que le témoin a
16 indiqué qu'il n'a pas fait d'enquête personnelle.
17 Me PAULE HAMELIN :
18 Je veux juste rappeler une chose. Nous avons
19 répondu à la demande d'engagement à l'effet de tout
20 ce que l'expert a revu dans le cadre de ce dossier.
21 Il a fait ses... il a vérifié la preuve de HQT. Il
22 a fait ses propres vérifications. Il a regardé les
23 ordonnances de la FERC et mon collègue essaie de
24 réduire ça en disant que c'est ce que Brookfield lui
25 a dit. Alors, je m'objecte à la façon dont il pose

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1 la question parce que c'est misleading.
2 Me ÉRIC DUNBERRY :
3 Monsieur le Président, le témoin pourra répondre.
4 Ma consœur fournit la réponse au témoin. Tantôt le
5 témoin a repris la réponse de ma consœur en réponse
6 à une de mes questions. Ce ne sont pas des motifs
7 d'objections valables, je vous le soumetts
8 respectueusement. Ce n'est que des interventions
9 pour couper le rythme du contre-interrogatoire et
10 fournir des éléments de réponses au témoin. Ce
11 n'est pas une objection, Monsieur le Président.
12 Et clairement, quand on fait des
13 allégations du type de celles qui sont faites, on
14 est en droit de tester la base, sur la base
15 desquelles ces allégations-là sont faites.
16 LE PRÉSIDENT :
17 Ici, la Régie va retenir l'objection. La dernière
18 question n'ajoute rien à la précédente. La réponse,
19 je pense, du témoin elle est là. Ce qu'il reste,
20 là, ça pourra être traité en argumentation
21 facilement puis le temps d'audience et nous avons
22 ajouté des journées mais déjà le temps accordé est
23 énorme et s'il devait manquer du temps, la Régie va
24 être obligée de mettre fin à quelque part, avant
25 d'avoir terminé, là. A quelque part, ça va trop

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1 loin l'ensemble des détails puis des admissions
2 qu'on recherche. Pour les fins d'une décision que
3 la Régie doit prendre à la fin de l'audience,
4 l'information commence à être très claire et il
5 restera l'argumentation.
6 Donc, la Régie va vous inviter à
7 poursuivre dans une autre ligne de questions.
8 Me ÉRIC DUNBERRY :
9 Alors, je vais interrompre mon contre-interrogatoire
10 sur ce sujet-là, Monsieur le Président.
11 Q.51 Mr. Roach, as a matter of principle, would
12 you agree with me that the process to
13 approve or amend a tariff is not a process
14 to resolve one particular client's
15 dispute; it is a process to establish
16 rules of general applications? Would you
17 agree with that statement?
18 R. I would agree with that, but I think in
19 many cases when general policies are
20 formed, a specific case brings the issues
21 to life and explains what the consequence
22 is and what the possible approaches are.
23 So, I agree we're here to do a
24 general policy. I just think the two
25 cases that I referenced bring it all to

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1 life.
2 Q.52 And would you also agree that the
3 implementation on a daily basis of tariffs
4 and conditions is left to the transmission
5 provider, subject to customers' rights
6 under the tariff, but that the actual
7 daily on a going-forward basis
8 implementation of the tariff is left to
9 the transmission provider, again subject
10 to the various rights of any customers?
11 R. What I disagree with is that the issue
12 here is a daily issue. We're talking
13 about longer term contracts, longer term
14 rights, rights that can now, under the
15 Régie's decision especially, be renewed.
16 So, I don't think this is the Régie or any
17 of us talking about daily calculations.
18 We're talking about longer term firm
19 transmission rights.
20 9H56
21 Q.53 But my question was whether you agreed
22 with my general statement that it is not
23 the Régie's duty to implement Tariff and
24 Conditions on a going-forward basis or
25 operational basis?

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1 R. No, I would disagree with that. I think 2 it is the regulators' position or right to 3 judge major changes like harmonization. 4 I'm not expecting the Régie in any form to 5 be there day-to-day, that's not what I'm 6 looking for, but I have every belief that 7 regulators would want to see beforehand 8 major changes like this, like the 9 harmonization proposal. 10 Q.54 I'm not - and again, please, and perhaps 11 my questions are not clear, Mr. Roach - 12 so, again, I'm not referring to changes to 13 the OATT; I am referring to the 14 application of the OATT, the 15 implementation as an operational or as a 16 commercial matter on a daily basis with 17 clients or with customers. 18 Now, would you agree with me that the 19 application, the implementation of the 20 Tariff is not the duty of the Régie but it 21 is the duty of the transmission service 22 provider subject to rights of customers, 23 based on your experience, Mr. Roach? 24 Me PAULE HAMELIN: 25 Monsieur le Président, je m'objecte, c'est la	1 l'OATT et le day-to-day; c'est même ses propres 2 mots. Alors, je pense qu'il a répondu à la question 3 et je suis obligée d'intervenir quand ça fait trois 4 fois qu'on pose la même question parce que mon 5 collègue semble dire qu'il n'a pas la... le témoin 6 ne répond pas à la question. Il répond à la 7 question mais mon collègue n'a pas la réponse qu'il 8 veut avoir. 9 LE PRÉSIDENT: 10 Alors, ici, la Régie va permettre la question. Je 11 crois par rapport aux deux questions précédentes il 12 y a une certaine ambiguïté quant à la position 13 exacte. Donc, la Régie permet la question. 14 Me ÉRIC DUNBERRY: 15 Q.55 So, Mr. Roach, could you answer the 16 question, please? 17 R. I think I have. Let's make the 18 distinction. This case and what I'm 19 talking about are cases in which there's a 20 major change in the method of calculating 21 ATC. Surely if that... I call that 22 implementation. And the Régie, or any 23 regulator, would want to be forewarned and 24 have a chance to review that before it 25 happens.
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1 troisième fois qu'on pose la question maintenant et 2 ça a été la même façon: Is it the Régie's duty to 3 implement Tariff on an operational basis? Il a 4 répondu avec les nuances. Ça fait la troisième fois 5 qu'on essaie de poser la même question. 6 Me ÉRIC DUNBERRY: 7 Monsieur le Président, le témoin ne répond pas, on 8 est tous là pour l'entendre. Je lui pose la 9 question à savoir... et ma consœur intervient 10 encore de façon inopportune, Monsieur le Président. 11 Je pose la question à savoir si 12 l'application du Tarif, il me répond un changement 13 important au Tarif doit être soumis à la Régie. Je 14 ne parle pas de changement au Tarif, je parle de sa 15 mise en oeuvre, de son application, et j'essaie de 16 faire des nuances pour permettre au témoin de mieux 17 me comprendre s'il ne me comprend pas. Mais la 18 question n'a pas été répondue. Le Tarif a, dans son 19 application quotidienne, des objectifs et je veux 20 savoir si le témoin est d'avis que l'application du 21 Tarif relève de la Régie ou si l'application du 22 Tarif relève du Transporteur. Selon lui. 23 Me PAULE HAMELIN: 24 Monsieur le Président, à nouveau, il a répondu en 25 faisant les nuances en fonction d'un changement de	1 I don't have the picture that maybe 2 you're trying to create of the Régie 3 sitting behind the HQT personnel who 4 calculate ATC by the hour and saying yes, 5 no to every bit of arithmetic they do, I 6 don't want that. But implementation, to 7 me, and the implementation issue in this 8 case is a bigger issue of a major change 9 in the ATC calculation. 10 Q.56 So, if I understand what you're saying, 11 implementing a Tariff is like changing a 12 Tariff, is that what you say? 13 R. Surely implementing a Tariff includes 14 changes, major changes, in things like 15 calculating ATC, yes. 16 Q.57 Well, I would like to refer you to 17 decision D-2010-160, the one that you 18 refer in your report, this is the 19 Brookfield decision. I believe it's C-6- 20 73, it's a decision that you I believe 21 obtained a translation for. I would like 22 to refer you to pages... actually, it is 23 paragraphs 134 to 136. It's near the end, 24 page 34. So, I understand you have a 25 translation of that decision, Mr. Roach?

UNITED STATES OF AMERICA 75 FERC 61,078
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 37

[Docket No. RM95-9-000]

Open Access Same-Time Information System (formerly Real-Time
Information Networks) and Standards of Conduct

ORDER NO. 889

FINAL RULE

(Issued April 24, 1996)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending 18 CFR to add Part 37 containing rules establishing and governing an Open Access Same-time Information System (OASIS) (formerly real-time information networks) and prescribing standards of conduct. Under this final rule, each public utility (or its agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce will be required to create or participate in an OASIS that will provide open access transmission customers and potential open access transmission customers with information, provided by electronic means, about available transmission capacity, prices, and other information that will enable them to obtain open access non-discriminatory transmission service. This final rule requires (1) each public utility subject to the rule to implement standards of conduct to functionally separate transmission and wholesale power merchant functions and (2) the creation of a basic OASIS system. In

service on a non-discriminatory basis. 12/ The notice of technical conference was followed by procedures and input (described in the RIN NOPR) that led to the issuance of the RIN NOPR.

Open access non-discriminatory transmission service requires that information about the transmission system must be made available to all transmission customers at the same time. This means that public utilities must make available to others the same transmission information that is available to their own employees and that is pertinent to decisions they make involving the sale or purchase of electricity. The RIN NOPR suggested requirements representing the first steps towards accomplishing these objectives.

The RIN NOPR addressed four main issues: the types of information that need to be posted on an OASIS; technical issues concerning the development and implementation of an OASIS; the development of a basic OASIS in Phase I and the development of a fully functional OASIS in Phase II; and proposed standards of conduct to prevent employees of a public utility (or any of its affiliates) engaged in marketing functions from obtaining preferential access to OASIS-related information.

The Commission's consideration of the first two of these issues relied heavily on the efforts of two industry-led working

12/ Real-Time Information Networks, Notice of Technical Conference and Request for Comments, 60 FR 17726 (April 7, 1995).

UNITED STATES OF AMERICA 78 FERC □ 61,221
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 37

[Docket No. RM95-9-001; Order No. 889-A]

Open Access Same-Time Information System and Standards of Conduct

(Issued March 4, 1997)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is revising its policy on posting discounts to be consistent with changes in the discount policy that we simultaneously are implementing in Order No. 888-A. Additionally, we are making other minor revisions to 18 CFR Part 37 -- which contains rules establishing and governing transmission information networks and standards of conduct -- to be responsive to arguments made on rehearing and to make the regulations operate more smoothly.

In addition, the Commission requests that the How Working Group propose the necessary changes in the Standards and Protocols document and the Data Dictionary by June 2, 1997 to address four issues.

EFFECTIVE DATE: This order on rehearing will become effective on [insert date 60 days from the date of publication in the Federal Register]. The current requirements of Part 37 will remain in effect until this order becomes effective.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information)
Office of Economic Policy
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

contend that, as the number of OASIS sites increases, OASIS postings become less meaningful and the accomplishments of the OASIS Final Rule lessen. 58/

Commission Conclusion

At this juncture, the Commission continues to believe it appropriate to encourage, but not require, regional OASIS sites. It is the Commission's understanding that most utilities are participating in regional OASIS sites. This issue can be revisited in Phase II of OASIS, if a significant number of utilities fail to join a regional OASIS and this results in significant inefficiency in bulk power markets.

G. SECTION 37.6 -- INFORMATION TO BE POSTED ON AN OASIS

1. Definition of Posted Path

Section 37.6(b)(1)(i) defines a posted path as: (1) any control area to control area interconnection; (2) any path for which service is denied, curtailed or interrupted for more than 24 hours in the past 12 months; and (3) any path for which a customer requests the posting of ATC or total transmission capability (TTC). For posted paths requested by customers, the paths must be posted for 180 days and the posting must continue after that until 180 days elapse from the most recent request for service over the path.

Rehearing Requests

58/ TAPS Rehearing Request at pp. 8-9 and TDU Systems Rehearing Request at p. 85.

□

CCEM argues that the Commission erred by requiring posting of ATC solely at interfaces between control areas. CCEM further argues that the Commission should require the posting of paths across control areas. 59/

MAPP argues that the Commission should reconsider the requirement to post ATC between control areas or, in the alternative, should grant it a waiver of this requirement. MAPP suggests that posted paths should be defined as paths between zones determined by transmission constraints. MAPP argues that defining posted paths in this manner would be more consistent with the MAPP regional flow-based transmission arrangement.

60/

EEI asks the Commission to revise the criteria for a customer-requested posted path. EEI argues that customers should have to make a service request over the path within 180 days of asking that the path be a posted path or face a penalty. 61/

Commission Conclusion

The Commission will not require the posting of all paths across control areas, since customers can request to have ATC and TTC posted for any path. Given that customers can request to have ATC and TTC posted for any path, adopting CCEM's proposal would burden OASIS sites with a very large number of posted paths that may have little commercial value.

59/ CCEM Rehearing Request at pp. 7-8.

60/ MAPP Rehearing Request at pp. 4-10.

61/ EEI Rehearing Request at p. 53.

As to MAPP's request to drop the requirement for posting ATC for paths between control areas, MAPP's concern appears to relate to business relationships particular to the MAPP agreement. MAPP's request for a waiver is not based on a lack of traffic over its system. It is based on the fact that MAPP's control areas do not correspond to the service territories of its members (MAPP has 26 utilities and 14 control areas). Some of its control areas cover the generation of more than one utility. Other control areas overlap the same geographic area, with each control area covering the generation of a separate utility.

Under MAPP's proposal, it will provide pool-wide transmission service based on a MW mile methodology. It proposes to determine the transmission availability for known constrained interfaces or paths and assess the impact on its member systems of each transaction based on the POD and POR for each transaction. MAPP argues that the Open Access Final Rule was intended to accommodate flow based pricing methods and that, under the circumstances, it makes sense for its member systems to make postings for area to area interfaces rather than control area to control area interfaces. MAPP argues that we should either change our rules for posting between control areas or grant it a waiver.

After reviewing MAPP's arguments, we do not believe that it would be appropriate to modify the ATC posting requirements to address a MAPP-specific issue. However, the Commission will grant MAPP a limited waiver of the control area to control area

□

ATC/TTC posting requirement (in □ 37.6(b)(1)(i)) based on the particular circumstances presented by the MAPP system. This waiver should not harm Transmission Customers because MAPP provides pool wide transmission service using a flow based (single MW-mile) pricing methodology for the entire system and proposes to determine transmission availability for all known constrained interfaces or paths. Moreover, this waiver only applies to postings for intra-MAPP interfaces. MAPP will still be required to post ATC and TTC for control area to control area paths that connect its member systems with neighboring transmission systems. Finally, MAPP customers can always request that ATC/TTC be posted for a specific path including a control area to control area path (in which case MAPP would be required to post the information for the path on its OASIS node).

Turning to EEI's suggested limitations on customers requesting that paths be posted, we find that requiring a customer to request service over any path that it asks to be posted places too heavy a burden on customers. However, the Commission may reconsider this requirement if we find that customers abuse the system by requesting postings for too many paths over which no requests for service are made.

2. Definition of interconnection

Posted path is defined in □ 37.6, in part, as any control area to control area interconnection. However, the regulation does not provide a definition of interconnection.

Rehearing Request

□

D-2002-95

R-3401-98

30 avril 2002

PRÉSENTS :

M^c Marc-André Patoine, B.A., LL.L

M. Anthony Frayne, B. Sc. (Écon.), MBA

M. François Tanguay

Régisseurs

Hydro-Québec

Demanderesse

et

**Intervenants et observateur dont les noms apparaissent à la
page suivante**

Intervenants

***Décision concernant la demande révisée relative à la
modification des tarifs de transport d'électricité***

Audience relative à la modification des tarifs de transport
d'électricité (*Loi sur la Régie de l'énergie*, L.R.Q., c. R-6.01, art.
48 à 51)

10. COMMERCIALISATION

10.1. SYSTEME D'INFORMATION EN TEMPS REEL (OASIS)

10.1.1. POSITION DES PARTIES

Le **transporteur** affirme que, conformément aux pratiques de l'industrie en Amérique du Nord, il offre tous les services de transport de point à point qui existent. Les quatre services offerts sont :

- le transit intérieur;
- le transit d'importation;
- le transit d'exportation;
- le transit interréseaux.¹³²²

Afin de permettre aux clients de réserver le service de transport dont ils ont besoin pour les transactions de point à point, le transporteur maintient un système d'information en temps réel (OASIS) qui leur assure un accès simultané et non discriminatoire. Le transporteur affirme que le système OASIS utilisé par TransÉnergie est conforme aux caractéristiques et au fonctionnement du système décrit à la partie 37 des règlements de la FERC et le transporteur désire maintenir un système comparable à ce dernier.¹³²³

Le système OASIS est accessible via l'internet. Il permet de commercialiser les différents services de transport de point à point. Ce système contient notamment de l'information sur les TTC et ATC et sur les tarifs en vigueur pour les différents types de services de transit (fermes et non fermes, horaires, journaliers, mensuels et annuels).

D'autres points pourraient s'ajouter à ceux présentement offerts sur OASIS selon que de nouveaux chemins sont requis pour répondre à des besoins commerciaux, par exemple l'alimentation d'une charge de gros au Québec ou l'ajout d'un nouveau point d'interconnexion avec un réseau voisin. Ainsi, le transporteur met son site OASIS à jour régulièrement pour tenir compte de l'évolution constante des marchés.¹³²⁴

Les capacités de transport offertes sur chacun des chemins sont mises à jour dès modification des capacités totales, confirmation des demandes de service ou chargement des programmes. Ces données peuvent être simplement consultées ou donner lieu à des

¹³²² Argumentation d'Hydro-Québec, 9 août 2001, page 164.

¹³²³ HQT-13, document 1, page 164, R96.1.

¹³²⁴ NS, 22 mai 2001, volume 23, pages 100 et 101; NS, 14 juin 2001, volume 31, pages 163 et 164.

demandes de réservation qui suivent alors un processus de traitement précis. Les services complémentaires sont également offerts sur le site.¹³²⁵

Enfin, le transporteur affirme qu'il se conforme aux exigences reconnues quant à la période pendant laquelle les informations sont accessibles sur son site OASIS.¹³²⁶

Selon **OPG**, la Régie devrait rendre permanente son exigence à l'effet que TransÉnergie affiche sur OASIS le type d'information sur les ATC qui ont été fournies en réponse à la demande de renseignements de l'intervenante concernant le calcul des ATC.¹³²⁷ De plus, OPG indique que la Régie devrait exiger, dans les 90 jours de la présente décision, plus d'informations sur les échanges entre le transporteur et les clients incluant des explications, de façon cohérente avec ce qui est fourni dans d'autres juridictions telles que PJM et NEPOOL. Selon l'intervenante, l'information demandée devrait être affichée d'une manière simple et facile à utiliser.¹³²⁸

OPG demande également à la Régie d'exiger, tous les ans, un audit indépendant, réalisé par une tierce partie, des calculs des ATC de TransÉnergie. Les résultats de cet audit devraient être publiquement disponibles par l'intermédiaire d'un dépôt annuel de conformité à la Régie. La Régie devrait également ordonner à TransÉnergie de s'assurer et de démontrer immédiatement sa conformité aux exigences de l'Ordonnance 889 de la FERC au sujet de la conservation et de la disponibilité d'informations historiques de soutien relatives aux ATC.¹³²⁹

Concernant les informations qui devraient être affichées sur le site OASIS, **NEG** est d'avis que les données relatives à la charge devraient être disponibles en temps réel comme cela est le cas pour Énergie NB. NEG demande également à la Régie d'ordonner à Hydro-Québec d'améliorer l'affichage de ses TTC/ATC de sorte que l'information soit cohérente des deux côtés des interconnexions.¹³³⁰

De plus, NEG soutient que l'ajout de données serait conforme aux pratiques commerciales des opérateurs de réseaux indépendants avoisinants. Les informations demandées sont

¹³²⁵ HQT-4, document I, pages 17 à 19.

¹³²⁶ Argumentation d'Hydro-Québec, 9 août 2001, page 172.

¹³²⁷ HQT-13, document 13.2, pages 2 à 8.

¹³²⁸ Argumentation d'OPG, 6 septembre 2001, page 15.

¹³²⁹ Argumentation d'OPG, 6 septembre 2001, page 15.

¹³³⁰ Argumentation de NEG, 6 septembre 2001, page 23.

relatives aux interruptions, aux « *Transmission System Flows* », aux rapports quotidiens d'opérations, à la température et aux prévisions « *7 day rolling* ». ¹³³¹

Lors de la présentation de sa contre-preuve, le transporteur a indiqué, en réponse à la demande de NEG pour des informations supplémentaires qui ne se retrouvent pas présentement sur le site OASIS de TransÉnergie, qu'il n'est pas nécessaire d'afficher ce type d'information, compte tenu de la structure du marché au Québec. Selon le transporteur, ce n'est que dans les endroits où il y a un marché public d'énergie à court terme que ces informations doivent être affichées. ¹³³²

NEG conclut que le transporteur répond aux exigences minimales d'affichage d'information requises par l'Ordonnance 889 de la FERC, mais fait défaut quant aux standards établis par les ISO américains existants.

Enfin, l'intervenante indique que le transporteur ne répond pas aux exigences d'audit des données prévues à l'Ordonnance 889 de la FERC. Des 10 catégories de données affichées sur OASIS, seulement deux sont fonctionnelles et il n'est pas possible de télécharger l'information. De plus, l'information historique pour l'année 2000 est dans un format Excel et aucune information n'est fournie quant aux raisons pour des demandes refusées. En outre, NEG soutient qu'il n'a pu obtenir ces données historiques dans un format utilisable. ¹³³³

En contre-preuve, le **transporteur** a indiqué qu'un historique de plus de 20 jours est disponible. Cette période de 20 jours constitue, selon lui, la norme de l'Ordonnance 889-A de la FERC. Le transporteur affirme que quelles que soient les adaptations qu'il a dû faire pour suivre les pratiques de l'industrie, il a toujours gardé un historique de plus de 20 jours sur le site OASIS. ¹³³⁴

Énergie NB affirme, en se basant notamment sur la preuve produite par NEG, que TransÉnergie bloque les transactions provenant de l'Ontario et en direction de l'Ontario parce que le marché de cette province ne serait pas ouvert et que l'Ontario n'offrirait pas la réciprocité.

Énergie NB mentionne que le marché de gros de l'électricité de la région du Nord-Est de l'Amérique du Nord fonctionne aussi ouvertement que possible et que les services de

¹³³¹ La liste complète des informations demandées par l'intervenante se retrouve au mémoire de NEG, 16 février 2001, pages 8 et 9.

¹³³² NS, 14 juin 2001, volume 31, pages 149 à 153.

¹³³³ Argumentation de NEG, 6 septembre 2001, page 23.

¹³³⁴ NS, 14 juin 2001, volume 31, pages 153 à 155.

transport de point à point sont disponibles sur l'ensemble de cette grande région. Parmi tous les transporteurs qui ont le droit d'insister sur le respect de la clause de réciprocité, Énergie NB souligne que seule Hydro-Québec s'est prévalu de ce droit. Tous les autres transporteurs ont choisi de ne pas limiter l'accès à leur réseau. C'est ainsi que New York a laissé tomber l'exigence de la réciprocité avec l'Ontario et a accepté les transactions de tous les négociants intéressés à faire affaires dans cette province. La Nouvelle-Angleterre a aussi laissé tomber l'exigence de réciprocité avec le Nouveau-Brunswick et accepte des transactions avec tous les négociants intéressés à faire affaires dans cette province.

Afin de démontrer que TransÉnergie traite de façon préférentielle Hydro-Québec Production, Énergie NB se réfère notamment à la preuve produite par NEG qui a démontré que TransÉnergie lui a refusé l'accès à l'interconnexion avec l'Ontario, mais a permis l'accès à Hydro-Québec Production.

En guise de solution à ce problème, Énergie NB demande à la Régie d'ordonner à Hydro-Québec de laisser tomber l'exigence de réciprocité avec l'Ontario et d'ouvrir son réseau à tous les usagers accrédités de TransÉnergie pour toutes les transactions aux interconnexions avec l'Ontario.¹³³⁵

En se référant à l'article 6 des « *Tarifs et conditions* », le transporteur a expliqué que si l'Ontario ne donne pas accès à Hydro-Québec, il ne donnera pas accès à des tiers qui transigent sur le réseau de l'Ontario.¹³³⁶ Par contre, le transporteur a affirmé que cela n'avait pas pour effet d'empêcher Hydro-Québec de faire le type de transactions qu'elle faisait avant l'ouverture du marché, c'est-à-dire des transactions à la frontière entre réseaux voisins. Selon le transporteur, cette réalité explique pourquoi on a identifié des cas où Hydro-Québec pouvait acheter de l'Ontario alors qu'un tiers voulant transiter de l'Ontario vers le Québec s'était fait refuser la transaction. Le transporteur conclut qu'il ne s'agit pas d'un traitement discriminatoire, mais d'une pratique chez les entités qui ont un contrat approuvé par la FERC.¹³³⁷

¹³³⁵ Argumentation d'Énergie NB, 6 septembre 2001, pages 57 et 58.

¹³³⁶ NS, 14 juin 2001, volume 31, page 2001. Le transporteur indique qu'il n'a pas à appliquer l'article 6 du contrat lorsqu'il s'agit d'Hydro-Québec.

¹³³⁷ NS, 14 juin 2001, volume 31, pages 160 à 162.

10.1.2. OPINION DE LA RÉGIE

Tel que la Régie en faisait mention dans sa décision D-2000-214, elle accorde une grande importance à la transparence du système de réservation de capacités de transport (OASIS) et à un accès non discriminatoire à ce dernier pour tous les participants au marché de gros.¹³³⁸ La Régie est convaincue que les informations décrites ci-dessous, dont elle exige l'affichage sur le site OASIS, vont contribuer à atteindre ces objectifs de transparence et de non-discrimination, en plus de faciliter la consultation du système de réservation.

La Régie prend acte du désir exprimé par le transporteur de maintenir un système comparable à celui décrit dans la partie 37 des règlements de la FERC. La Régie considère que ce sont les informations qui devront, au minimum, être affichées sur le site OASIS du transporteur.

De plus, la Régie demande au transporteur de la tenir continuellement informée des changements apportés à son site OASIS en précisant ceux qui découlent directement de modifications apportées aux caractéristiques et au fonctionnement du système décrit à la partie 37 des règlements de la FERC. Les changements apportés devront être systématiquement annoncés sur le site OASIS du transporteur afin d'en informer sa clientèle.

Par ailleurs, la Régie ordonne au transporteur d'afficher systématiquement et sans délai, toute demande de service, incluant les demandes de renouvellement prévues à l'article 2 des « *Tarifs et conditions* ».

Enfin, la Régie ordonne au transporteur de modifier les articles des « *Tarifs et conditions* » afin d'y introduire une référence aux prescriptions à la présente décision, concernant OASIS.

Services de point à point offerts et accessibilité des clients

La Régie demande au transporteur de revoir les définitions des activités de transit de point à point que l'on retrouve aux pages 4 et 5 du document HQT-4, document 1, de façon à n'utiliser qu'une seule notion territoriale. La Régie note que les définitions présentées font référence au réseau de transport d'Hydro-Québec et à la notion du territoire du Québec. La Régie est d'avis que cette situation peut générer de la confusion spécialement pour le transit interréseaux.¹³³⁹

¹³³⁸ Décision D-2000-214, 24 novembre 2000, page 68.

¹³³⁹ NS, 23 mai 2001, volume 24, page 102. Lors de l'audience, le transporteur a précisé qu'Hydro-Québec Production réalise des transits d'exportation alors que le transporteur considère que les transactions des autres producteurs « à l'intérieur de la zone géographique d'Hydro-Québec » sont des transits interréseaux.

De plus, afin de clarifier les règles d'utilisation du réseau de transport, la Régie ordonne au transporteur de publier sur son site internet et sur son site OASIS, dans un délai de trois mois, un manuel détaillé précisant :

- l'accessibilité des clients aux activités de transit d'importation, d'exportation, interréseaux et intérieur;
- les conditions particulières d'accès à chacun des chemins affichés sur OASIS.

Concernant les conditions particulières, la Régie tient à ce que les clients du transporteur soient clairement informés des chemins sur lesquels il leur est permis de réserver de la capacité de transport et ceux sur lesquels l'accès leur est refusé. En se référant à l'article 6 des « *Tarifs et conditions* », le transporteur a présenté la situation prévalant sur les chemins d'interconnexion avec le réseau de l'Ontario qui n'est pas ouvert. Le transporteur a expliqué en audience que si l'Ontario ne donne pas accès à Hydro-Québec, cette dernière ne donnera pas accès à des tiers qui transigent sur le réseau de l'Ontario.¹³⁴⁰ La Régie tient à ce que le site OASIS du transporteur présente les chemins pouvant faire l'objet de restrictions de telle nature, ou d'autres formes de restrictions, limitant les possibilités de transactions de sa clientèle.

ATC

La Régie note que le sujet des ATC a suscité beaucoup d'attention de la part des clients actuels et potentiels du transporteur. Ce dernier s'est montré favorable, en cours d'audience, à afficher davantage d'information sur son site OASIS afin de favoriser une meilleure compréhension du calcul des ATC. D'ailleurs, le transporteur a reconnu que le document déposé en preuve et présentant les principaux éléments servant à établir les ATC pourrait bénéficier d'une bonification quant aux explications contenues.¹³⁴¹

La Régie ordonne au transporteur de publier, sur son site OASIS, les explications nécessaires à la compréhension des calculs de détermination des ATC ainsi que maintenir, dans un fichier publié sur le site OASIS, les questions posées par les clients ainsi que les réponses fournies par les responsables du site OASIS. Parmi les informations disponibles sur le site OASIS, celles demandées par OPG, aux questions 3a) à 3e) inclusivement de la partie II de sa demande de renseignements concernant le calcul des ATC, doivent y apparaître.

En conformité avec les standards et procédure du NERC/NPCC, la Régie considère que la politique générale du transporteur doit être de coordonner ses calculs et les résultats de ses capacités de transfert avec les autres réseaux. Dans l'éventualité où cette exigence de la

¹³⁴⁰ NS, 14 juin 2001, volume 31, pages 160 à 162.

¹³⁴¹ NS, 1^{er} juin 2001, volume 30, page 248.

Régie serait inapplicable pour un ou des chemins, le transporteur devra présenter à la Régie une demande d'exemption spécifique. Une telle demande devra être justifiée et comporter, entre autres, le détail des démarches effectuées auprès du NERC/NPCC.

Audit indépendant

Selon la Régie, il n'est pas requis de procéder à un audit annuel indépendant, tel que demandé par l'intervenante OPG. La Régie note qu'un tel audit indépendant n'est pas la norme dans l'industrie. La Régie n'est pas convaincue qu'un audit indépendant puisse permettre de solutionner la problématique de la non-coordination des calculs et des résultats de ses capacités de transfert avec les autres réseaux. Par conséquent, la Régie rejette la demande d'OPG de procéder à un tel audit.

Toutefois, la Régie considère nécessaire qu'une vérification par la Régie de la conformité du site OASIS avec le Règlement 37 de la FERC et avec les directives de la Régie incluses à la présente décision soit réalisée dès le début de la réglementation du transporteur par la Régie. Cette vérification se tiendra en 2002 ou aussitôt que possible.

Données historiques

La Régie demande au transporteur de s'assurer, lors de la transmission à un client de données historiques dans un format autre que celui dans lequel les données sont affichées sur le site OASIS, que les données transmises soient accompagnées des explications requises pour une bonne compréhension des données fournies et de l'ensemble des données incluses dans le fichier original.

De plus, la Régie prend acte que le transporteur a un projet informatique en cours pour afficher l'historique des transits.¹³⁴² La Régie demande au transporteur d'afficher sur son site OASIS l'information dès qu'elle est disponible.

Informations diverses requises par NEG

La Régie est d'avis qu'il n'est pas nécessaire pour le transporteur d'afficher sur OASIS toutes les informations demandées par NEG qui sont généralement rendues disponibles par les ISO avoisinants. Les informations recherchées sont davantage associées à des marchés où on retrouve une bourse d'énergie. Ce n'est pas le cas au Québec.

¹³⁴² NS, 14 juin 2001, volume 31, page 151.

Cependant, la Régie ordonne au transporteur d'afficher sur son site OASIS toutes les informations qu'il est en mesure de produire concernant la disponibilité et l'utilisation des chemins d'interconnexion, et ce, en suivant les pratiques commerciales des ISO avoisinants.

DÉCISION

QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2006-66

R-3549-2004

18 avril 2006

PRÉSENTS :

M^c Benoît Pepin, LL.M.

M. François Tanguay

M. Richard Carrier, B.Sc. (Écon.), M.A. (Écon.)

Régisseurs

Hydro-Québec

Demanderesse

et

Intervenants dont les noms apparaissent à la page suivante

Intervenants

**Décision sur la Phase 2 : répartition du coût de service,
tarifs et conditions de service**

*Demande relative à la modification des conditions des
services de transport d'Hydro-Québec*

Intervenants :

- Association coopérative d'économie familiale de Québec (ACEF de Québec);
- Association de l'industrie électrique du Québec (AIEQ);
- Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ);
- Brascan Énergie Marketing Inc. (BEMI);
- Fédération canadienne de l'entreprise indépendante (FCEI);
- Option consommateurs (OC);
- Ontario Power Generation (OPG);
- Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ);
- Union des consommateurs (UC);
- Union des municipalités du Québec (UMQ).

double plafond que le niveau de ce plafond dans le cadre de l'étude relative à la définition des postes de départ justifiant les niveaux des contributions maximales.

6.2 PRIORITÉS D'UTILISATION DES INTERCONNEXIONS

Le Transporteur présente un tableau indiquant les priorités d'utilisation des interconnexions qu'il accorde en mode importation et en mode exportation.

La priorité de niveau 1 concerne le service pour l'alimentation de la charge locale avec une ressource désignée du Distributeur ainsi que le service de point à point ferme de long terme.

En commercialisant les capacités de transport résiduelles auprès de la clientèle des services de transport de point à point, le Transporteur optimise l'utilisation de son réseau et partant, réduit la part du revenu requis assumée par la charge locale. La responsabilité ultime du revenu requis repose sur la charge locale comme l'a souligné la *Federal Energy Regulatory Commission* (FERC) à la page 136 de son Ordonnance 888-A :

« We note that network service is founded on the notion that the transmission provider has a duty to plan and construct the transmission system to meet the present and future needs of its native load and, by comparability, its third-party network customers. In return, the native load and third-party network customers must pay all of the system's fixed costs that are not covered by the proceeds of point-to-point service. This means that native load and third-party network customers bear ultimate responsibility for the costs of both the capacity that they use and any capacity that is not reserved by point-to-point customers ».

Il est légitime d'accorder à la charge locale et au service de point à point ferme de long terme la priorité d'utilisation des installations du réseau de transport nécessaires pour desservir leurs besoins. Les dépenses et les investissements relatifs au réseau de transport servant à répondre aux besoins de ces clients, cette priorité est justifiée.

Le niveau 2 de priorité est accordé au service de point à point ferme de court terme alors que le niveau 4 est réservé aux transactions non fermes. Ces priorités sont conformes à la structure du tarif pro forma de la FERC et sont justifiées.

La priorité de niveau 3 en mode réception proposée s'applique aux ressources non désignées pour alimenter la charge locale, dont les importations du Producteur pour l'alimentation de la charge locale afin d'assurer la satisfaction du contrat patrimonial. Or, cette priorité n'est

prévue au tarif pro forma que pour le Distributeur⁵⁴. On ne peut y lire ni dans le tarif pro forma, ni au *Décret concernant les caractéristiques de l'approvisionnement des marchés québécois en électricité patrimoniale*⁵⁵, qu'elle s'applique au Producteur.

D'un côté, l'ACEF de Québec demande que la charge locale ait priorité sur l'ensemble des services de point à point fermes et non fermes. De l'autre, selon BEMI, la priorité de niveau 3 donne au Producteur une priorité en mode importation sur toute demande de service de point à point non ferme de court terme. Elle constitue un traitement privilégié en sa faveur.

Dans les faits, quand le Producteur importe, le Transporteur présume qu'il alimente la charge locale. Cependant, le Producteur réalise également des activités d'arbitrage. Afin d'éviter un traitement préférentiel, en l'absence d'information permettant de distinguer en temps réel les importations pour l'alimentation de la charge locale des transactions d'arbitrage, le Producteur doit être traité de la même façon que l'ensemble des autres clients du Transporteur, sans privilège pour ses importations.

Pour la charge locale, la Régie reste sensible aux motifs soumis pour justifier la priorité de niveau 3. Son analyse doit prendre en compte non seulement l'intérêt de la charge locale de sécuriser son approvisionnement patrimonial, mais aussi celui des autres participants au marché d'obtenir un accès non discriminatoire au réseau du Transporteur. Cette philosophie d'accès ouvert et non discriminatoire au réseau est une composante fondamentale de l'ensemble de la structure réglementaire du transport de l'électricité au Québec et en Amérique du Nord.

Dans ce cadre, la Régie retient que la charge locale et le service de point à point ferme de long terme sont prioritaires. En plus, le Distributeur désigne les ressources annuellement et peut aussi désigner, en tout temps, les ressources additionnelles qu'il juge nécessaires à la desserte de ses clients⁵⁶.

Par la nature de ses activités et l'horizon actuel de la planification de ses approvisionnements, le Distributeur peut devoir combler des besoins additionnels à ceux prévus au début ou en cours d'année. La Régie est donc disposée, pour lui accorder un accès au réseau qui tient compte de son rôle et de ses moyens, à maintenir sa priorité de niveau 3 pour les fins de la desserte de la charge locale par des importations directes de court terme.

⁵⁴ Voir l'équivalent, pour les Tarifs et conditions, aux articles 28.4 et 36.3.

⁵⁵ Décret 1277-2001, 24 octobre 2001, (2001) 133 G.O.2, page 7705.

⁵⁶ Tarifs et conditions, article 36.3.

Le besoin d'une telle priorité pour le Distributeur étant fonction de ses moyens d'approvisionnement, elle pourra être revue au fil de l'évolution du marché québécois.

La Régie n'est toutefois pas convaincue du besoin d'accorder cette priorité au fournisseur du Distributeur qu'est le Producteur pour les fins de l'approvisionnement patrimonial, comme le mentionne BEMI. Après les réservations de long terme, le Transporteur commercialise par le service de point à point de court terme les capacités restantes de son réseau que le Producteur et les autres participants au marché peuvent réserver en respectant les tarifs et les conditions de service habituels, incluant les priorités disponibles⁵⁷.

Bien que le décret patrimonial mentionne que l'électricité fournie par le Producteur au Distributeur peut être « produite ou achetée » par lui, il n'exclut en rien que le Producteur soit assujetti, comme tous les clients, au respect des tarifs et des conditions d'accès non discriminatoire au réseau de transport.

« L'approvisionnement des marchés québécois en électricité patrimoniale est assuré par la fourniture d'électricité produite ou achetée par le fournisseur ou rappelée par ce dernier en vertu des contrats spéciaux ou des ententes de services comportant des clauses de puissance interruptible en vigueur le 1 janvier 2001. »
(nos soulignés)

La Régie ne peut déduire une priorité d'accès aux interconnexions de cet article 1 du décret patrimonial, sans devoir y ajouter des mots qui n'y sont pas.

La Régie accepte en partie seulement la priorité 3 en mode réception proposée par le Transporteur⁵⁸. Elle la modifie pour ajouter que cette priorité ne peut être exercée que par le Distributeur.

⁵⁷ Le texte des Tarifs et conditions, à ses articles 13.3 et 14.3 prévoit d'ailleurs que le Producteur, tout comme le Distributeur, est assujetti aux tarifs et conditions du service de point à point pour ses ventes à des tiers. Dans l'esprit de la séparation fonctionnelle de Hydro-Québec sous-jacente aux Tarifs et conditions, le Producteur et le Distributeur sont, l'un par rapport à l'autre, des tiers.

⁵⁸ Pièce HQT-5, document 1, page 13.

TABLEAU 4
PRIORITÉ DES INTERCONNEXIONS

Livraisons (exportation)	Réception (importation)
1. Service de point à point long terme (un an et plus) ferme	1. Service pour l'alimentation de la charge locale avec une ressource désignée du Distributeur, ainsi que service de point à point à long terme (un an et plus) ferme
2. Service de point à point de court terme ferme 2.1 Mensuel 2.2 Hebdomadaire 2.3 Quotidien	2. Service de point à point de court terme ferme 2.1 Mensuel 2.2 Hebdomadaire 2.3 Quotidien
3. s.o	3. Service pour l'alimentation de la charge locale avec une ressource non désignée. <u>Cette priorité ne peut être exercée que par le Distributeur.</u>
4. Service de point à point de court terme non ferme 4.1 Mensuel 4.2 Hebdomadaire 4.3 Quotidien 4.4 Horaire	4. Service de point à point de court terme non ferme 4.1 Mensuel 4.2 Hebdomadaire 4.3 Quotidien 4.4 Horaire

6.3 ÉNERGIE D'URGENCE

Le Transporteur propose d'ajouter les articles 1.19.1 et 7A aux Tarifs et conditions pour prévoir les modalités de traitement de l'énergie d'urgence en mode livraison et en mode réception.

Conformément aux pratiques usuelles des services publics et en particulier aux exigences du *North American Reliability Council* (NERC) et du *Northeast Power Coordinating Council* (NPCC)⁵⁹, le Transporteur doit livrer de l'énergie d'urgence à une zone de réglage voisine, sur demande de cette dernière. À ce titre, il facture la zone de réglage réceptrice selon la formule de prix applicable et paie le fournisseur d'énergie d'urgence.

⁵⁹ *Emergency Operation Criteria*, NPCC document A-3, adopté le 25 janvier 1982, tel que révisé.

DÉCISION

QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2006-85	R-3549-2004	18 mai 2006
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PRÉSENTS :

M^e Benoît Pepin, LL.M.

M. François Tanguay

M. Richard Carrier, B.Sc. (Écon.), M.A. (Écon.)

Régisseurs

Hydro-Québec

Demanderesse

et

Intervenants dont les noms apparaissent à la page suivante

Intervenants

**Décision sur la Phase 2 : répartition du coût de service,
tarifs et conditions de service**

*Demande de rectification de l'Annexe D de la décision
D-2006-66 des conditions des services de transport d'Hydro-
Québec*

Intervenants :

- Association coopérative d'économie familiale de Québec (ACEF de Québec);
- Association de l'industrie électrique du Québec (AIEQ);
- Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ);
- Brascan Énergie Marketing Inc. (BEMI);
- Fédération canadienne de l'entreprise indépendante (FCEI);
- Option consommateurs (OC);
- Ontario Power Generation (OPG);
- Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ);
- Union des consommateurs (UC);
- Union des municipalités du Québec (UMQ).

1. INTRODUCTION

Le 18 avril 2006, la Régie rend la décision D-2006-66 relative à la Phase 2 de la demande tarifaire 2005 d'Hydro-Québec dans ses activités de transport d'électricité (le Transporteur). L'Annexe D de cette décision édicte le texte des Tarifs et conditions approuvés par la Régie.

Le 3 mai 2006, le Transporteur demande, en vertu de l'article 38 de la *Loi sur la Régie de l'énergie*¹, d'en rectifier 5 points :

N°	Article	Rectification
1	3	Ajout au 1 ^{er} par: ... <i>et (iii) compensation d'écart de réception</i> ... Suppression au 2 ^e par: ... <i>compensation d'écart de réception</i> ...
2	13.7 d)	Remplacer à deux endroits dans cet article: ... <i>annexe 7</i> ... Par: ... <i>annexe 9</i> ...
3	14.5	Remplacer à trois endroits dans cet article: ... <i>annexe 8</i> ... Par: ... <i>annexe 10</i> ...
4	14.5	Ajout: ... <i>d) Le Transporteur n'impose aucun frais aux réservations dont le point de livraison est le point HQT.</i>
5	Appendice J, section B	Ajout de: ... <i>achetés ou</i> ...

Le 4 mai 2006, le RNCREQ émet ses commentaires et le Transporteur y réplique le 5 mai, puis le 12 mai, BEMI transmet ses commentaires auxquels le Transporteur réplique le 16 mai 2006.

2. SERVICE DE COMPENSATION D'ÉCART DE RÉCEPTION

À l'article 3 des Tarifs et conditions, le Transporteur demande d'ajouter à la liste des services complémentaires qu'il est tenu de fournir et que les clients du service de transport de point à point sont tenus d'acquérir, le service Compensation d'écart de réception.

¹ L.R.Q. c. R-6.01.

Cette demande n'a pas été formulée en cours d'audience. Elle n'a donc pas fait l'objet de débat. De plus, le besoin d'imposer à tous les utilisateurs du réseau l'acquisition de ce service auprès du Transporteur n'a pas été présenté. En conséquence, cette demande ne vise pas la rectification d'une erreur de forme visée par l'article 38 de la Loi.

La Régie rejette la demande de rectification de l'article 3 des Tarifs et conditions.

3. FRAIS DE RÉSERVATION EN IMPORTATION

Le Transporteur propose l'ajout suivant à l'article 14.5 des Tarifs et conditions :

« d) Le Transporteur n'impose aucun frais aux réservations dont le point de livraison est le point HQT. »

Selon le RNCREQ, la raison d'être de la non tarification actuelle des importations se fonde, entre autres, sur l'article 36.3 des Tarifs et conditions. Créer une exception au tarif de point à point pour toute importation serait une modification aux Tarifs et conditions, même si, pour le moment, il n'y a pas d'autre importation possible.

Le Transporteur réplique que la rectification demandée vise à assurer que la position de la Régie, aux pages 43 à 45 de sa décision D-2006-66, soit reflétée dans les Tarifs et conditions. Tel que décidé par la Régie, le Transporteur n'accorde plus une priorité d'utilisation des interconnexions aux importations des fournisseurs de la charge locale qui soit supérieure aux services de point à point non fermes, mais il maintient les autres caractéristiques de l'utilisation des interconnexions pour assurer la fiabilité et la sécurité de l'alimentation de la charge locale.

Dans sa décision D-2006-66, la Régie ne formule aucune modification du texte des Tarifs et conditions. Sa décision ne porte que sur l'interprétation du texte proposé par le Transporteur en regard des priorités d'utilisation des interconnexions. Elle ne porte donc aucunement sur la tarification de ces importations.

Le Transporteur propose de clarifier le texte des Tarifs et conditions en vigueur, pour y mentionner explicitement que les importations des fournisseurs pour satisfaire les besoins québécois se font sans frais. La Régie prend acte de l'objectif du Transporteur de maintenir la tarification actuelle des importations et comprend la préoccupation des intervenants. Elle

conclut que la rectification proposée n'est pas appropriée puisque les implications de cette proposition de texte n'ont pas été abordées dans le cadre de l'audience.

En conséquence, la Régie réitère que sa décision D-2006-66 ne vise que les priorités d'utilisation des interconnexions. L'interprétation qu'elle donne des Tarifs et conditions n'a pas pour objet de modifier la tarification des importations. Dans cette mesure, la modification du texte des Tarifs et conditions n'est pas requise avant un examen public et elle rejette la demande de rectification.

4. RÉFÉRENCES AUX ANNEXES

Le Transporteur demande de corriger les références des annexes 7 et 8 aux articles 13.7 d) et 14.5 des Tarifs et conditions. La Régie accepte ces rectifications. Il s'agit d'erreurs de forme dans la documentation soumise par le Transporteur, dont la version électronique ne correspond pas à la version papier examinée par la Régie aux fins de sa décision.

En conséquence, la Régie remplace :

- au paragraphe d) de l'article 13.7, aux feuilles 49 et 50 des Tarifs et conditions, les références à « l'annexe 7 » par celles à « l'annexe 9 »,
- à l'article 14.5, aux feuilles 54 et 55 des Tarifs et conditions, les références à « l'annexe 8 » par celles à « l'annexe 10 ».

5. APPENDICE J, SECTION B DES TARIFS ET CONDITIONS

Le Transporteur demande d'ajouter, au 1^{er} paragraphe de la section B de l'Appendice J les mots « *achetés ou* ».

La Régie accepte la demande du Transporteur. Il s'agit, encore une fois, d'une erreur de forme effectuée par le Transporteur lors de l'envoi du texte des Tarifs et conditions dont la version électronique ne correspond pas à la version écrite étudiée par la Régie.

La Régie ajoute des mots « *achetés ou* » à la dernière phrase du premier paragraphe de la section B de l'appendice J, à la feuille 198 des Tarifs et conditions.

VU ce qui précède;

La Régie de l'énergie :

ACCUEILLE partiellement la demande de rectification du Transporteur;

RECTIFIE le texte des Tarifs et conditions à l'Annexe D de la décision D-2006-66, aux articles 13.7 d) et 14.5 ainsi qu'à la section B de l'Appendice J, tel qu'édicté à l'Annexe A de la présente décision.

Benoît Pepin
Régisseur

François Tanguay
Régisseur

Richard Carrier
Régisseur

Représentants :

- Association coopérative d'économie familiale de Québec (ACEF de Québec) représentée par MM. Richard Dagenais et Vital Barbeau;
- Association de l'industrie électrique du Québec (AIEQ) représentée par M. Jean-François Samray;
- Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ) représenté par M^c Pierre Pelletier;
- Brascan Énergie Marketing Inc. (BEMI) représenté par M^c Paule Hamelin;
- Fédération canadienne de l'entreprise indépendante (FCEI) représentée par M^c André Turmel;
- Hydro-Québec représentée par M^c F. Jean Morel et M^c Carolina Rinfret;
- Option consommateurs (OC) représentée par M^c Stéphanie Lussier;
- Ontario Power Generation (OPG) représentée par M^c Pierre Tourigny;
- Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ) représenté par M^c Hélène Sicard;
- Union des consommateurs (UC) représentée par M^c Eve-Lyne H. Fecteau;
- Union des municipalités du Québec (UMQ) représentée par M^c Steve Cadrin;
- M^c Jean-François Ouimette pour la Régie de l'énergie.

ANNEXE A

Annexe A (5 pages)

B.P.

F.T.

R.C.

HYDRO-QUÉBEC

Tarifs et conditions des services de transport
Feuille rectifiée n° 49

ferme est réservée par le client du service de transport doit être stipulé dans la convention de service de transport ferme de point à point avec une réservation de capacité correspondante associée à chaque point de réception. Chaque point de livraison où une capacité de transport ferme est réservée par le client du service de transport doit être stipulé dans la convention de service de transport ferme de point à point avec une réservation de capacité correspondante associée à chaque point de livraison. La capacité réservée pour le client du service de transport correspondra au plus élevé des montants suivants : (1) la somme des réservations de capacité au(x) point(s) de réception ou (2) la somme des réservations de capacité au(x) point(s) de livraison. Le client du service de transport se verra facturer sa capacité réservée conformément à l'annexe 9. Le client du service de transport ne peut pas dépasser sa capacité réservée ferme à chaque point de réception et à chaque point de livraison, sauf stipulation contraire à l'article 22. Advenant qu'un client du service de transport (y compris le Producteur ou le Distributeur pour des ventes à un tiers) dépasse sa capacité réservée ferme à un point de réception ou de livraison, le client du service de transport

HYDRO-QUÉBEC

Tarifs et conditions des services de transport
Feuille rectifiée n° 50

paiera au Transporteur un montant égal à 150 % des frais applicables en vertu de l'annexe 9 pour la capacité excédant la capacité réservée ferme.

- 13.8** **Programmation du service de transport ferme de point à point :** Suite à toute réservation de service de transport, les programmes relatifs au service de transport ferme de point à point du client du service de transport doivent être soumis au Transporteur au plus tard à 13 heures la veille du début du service. Les programmes soumis après 13 heures seront respectés, si possible. Les programmes d'heure en heure de livraison de puissance et d'énergie doivent être présentés par unités de 1 000 kW/heure. Les clients du service de transport dans la zone de service du Transporteur ayant plusieurs demandes de service de transport à un point de réception, chacune étant inférieure à 1 000 kW/heure, peuvent regrouper leurs demandes de service à un point de réception commun en unités de 1 000 kW/heure à des fins de programmation et de facturation. Les changements de programmation seront permis jusqu'à trente (30) minutes avant le début de l'heure suivante à condition que le fournisseur et le receveur s'entendent aussi sur la modification du programme. Le Transporteur fournira à l'exploitant du réseau du fournisseur, des programmes d'heure en heure équivalents à ceux que fournit le receveur (sauf s'ils sont réduits pour des pertes) et doit livrer la

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Tarifs et conditions des services de transport
Feuille rectifiée n° 54

livraison quelconque, le client du service de transport paiera au Transporteur 150 % des frais applicables conformément à l'annexe 10 pour la capacité qui a excédé la capacité réservée non ferme. Le service de transport non ferme de point à point doit inclure le transport d'énergie sur une base horaire et le transport de la puissance et de l'énergie programmées à court terme sur une base quotidienne, hebdomadaire ou mensuelle mais sans dépasser la réservation d'un mois pour quelque demande, conformément à l'annexe 10.

- a) Le client du service de transport peut acheter un service de transport non ferme pour faire des ventes d'énergie provenant de différents groupes turbine-alternateurs qui se trouvent sur le réseau de transport du Transporteur. Pour un tel achat de service de transport, le point HQT est désigné comme point de réception, sauf si les différents groupes turbine-alternateurs sont situés dans la même centrale électrique, auquel cas ils sont traités comme un point de réception unique.
- b) Le client du service de transport peut acheter un service de transport en désignant le point de livraison ou le point de réception uniquement, pourvu qu'il effectue dans le délai requis les réservations nécessaires pour effectuer les livraisons non fermes de puissance et d'énergie du(des) point(s) de réception au(x) point(s) de

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Tarifs et conditions des services de transport
Feuille rectifiée n° 55

livraison sur une base non ferme conformément à l'article 22.1, même s'il s'agit d'un service non ferme uniquement.

- (c) La capacité réservée pour le client du service de transport correspondra au plus élevé des montants suivants : (1) la somme des réservations de capacité au(x) point(s) de réception ou (2) la somme des réservations de capacité au(x) point(s) de livraison. Le client du service de transport se verra facturer sa capacité réservée conformément à l'annexe 10.

14.6 Programmation du service de transport non ferme de point à point : Suite à toute réservation de service de transport, les programmes pour le service de transport non ferme de point à point doivent être soumis au Transporteur au plus tard à 13 heures la veille du début du service. Les programmes soumis après 13 heures seront respectés, si possible. Les programmes d'heure en heure de livraison d'énergie doivent être présentés par unités de 1 000 kW/heure. Les clients du service de transport dans la zone de réglage du Transporteur ayant plusieurs demandes de service de transport à un point de réception, chacune étant inférieure à 1 000 kW/heure, peuvent regrouper leurs demandes de service à un point commun de réception en unités de 1 000 kW/heure. Les changements de programmation seront permis jusqu'à trente (30) minutes avant le début de

HYDRO-QUÉBEC

Tarifs et conditions des services de transport
Feuille rectifiée n° 198**Section B - Ajouts au réseau pour l'intégration de centrale**

Les ajouts au réseau pour l'intégration d'une nouvelle centrale, ou pour l'accroissement de puissance d'une centrale existante, peuvent être répartis en cinq (5) catégories: le poste de départ, le réseau d'intégration, les modifications au réseau de transport incluant les équipements de télécommunication, les modifications au réseau de distribution et les équipements de mesurage et de télécommunication qui sont achetés ou loués par le Transporteur.

Tous les ajouts au réseau indiqués dans la présente section B sont planifiés, construits, exploités et entretenus par le Transporteur, à l'exception des modifications au réseau de distribution qui sont sous la responsabilité du Distributeur. Le poste de départ est quant à lui sous la responsabilité du propriétaire de la centrale, lorsque celle-ci appartient à une entité autre qu'Hydro-Québec.

Avant de procéder aux ajouts au réseau, le Transporteur et le propriétaire de la centrale doivent convenir d'une Entente de raccordement, conformément aux dispositions de l'article 12A des présentes, dans laquelle sont précisés, notamment, la date prévue de mise en service de la centrale, les coûts remboursables par le propriétaire de la centrale au Transporteur, s'il y a lieu, les garanties financières exigibles pour couvrir le coût prévu des ajouts au réseau effectués par le Transporteur et le Distributeur et les normes techniques applicables à toute centrale raccordée au réseau du Transporteur ou du Distributeur. Les garanties financières remises au Transporteur selon l'Entente de raccordement sont retournées au propriétaire de la centrale à la mise en service de celle-ci, moins tout montant encouru par le Transporteur préalablement à l'abandon ou à un retard important

DÉCISION

QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2008-116

R-3669-2008

11 septembre 2008

PRÉSENTS :

Richard Carrier
Lucie Gervais
Jean-François Viau
Régisseurs

Hydro-Québec
Demanderesse

**Décision sur les sujets à débattre et les demandes
d'intervention**

*Demande relative à la modification des tarifs et conditions
des services de transport d'Hydro-Québec à compter du 1^{er}
janvier 2009*

Intéressés :

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

1. INTRODUCTION

La présente décision porte sur les sujets à débattre, les demandes d'intervention, les budgets prévisionnels et le calendrier d'audience relatifs à la demande de modification des tarifs et conditions des services de transport d'Hydro-Québec au 1^{er} janvier 2009.

2. HISTORIQUE

Le 29 juillet 2008, Hydro-Québec dans ses activités de transport d'électricité (le Transporteur) dépose à la Régie de l'énergie (la Régie) une demande relative à la modification des tarifs et conditions des services de transport. Le Transporteur dépose, sous pli confidentiel, trois pièces au dossier.

Le 6 août 2008, la Régie rend la décision procédurale D-2008-100 et l'avis public y prévu paraît le 9 août 2008.

Du 18 au 22 août 2008, la Régie reçoit les demandes d'intervention. Le Transporteur émet ses commentaires sur celles-ci le 28 août 2008. La FCEI, le GRAME, OC, le RNCREQ et S.É./AQLPA transmettent leur réplique le 3 septembre 2008. Ce même jour, l'UMQ dépose une demande d'intervention amendée.

3. OPINION DE LA RÉGIE

La Régie a reçu les demandes d'intervention de onze intéressés¹ pour le présent dossier.

À la lumière des demandes d'intervention, des commentaires du Transporteur et des répliques des intéressés, la Régie apporte les précisions suivantes quant au traitement de certains sujets à débattre.

¹ ACEF de Québec, AIEQ, AQCIE/CIFQ, EBMI, FCEI, GRAME, OC, RNCREQ, S.É./AQLPA, UC, UMQ.

3.1 PRÉCISIONS SUR CERTAINS SUJETS À DÉBATTRE

La Régie a pris connaissance des diverses demandes des intéressés. Pour des raisons d'efficacité dans le traitement du présent dossier, la Régie a choisi de limiter la portée de certains sujets pour en permettre un examen approprié.

POLITIQUE FINANCIÈRE ET TAUX DE RENDEMENT

Les fondements méthodologiques liés à la détermination du taux de rendement et du coût de la dette ne seront pas inclus dans les sujets à débattre dans la présente audience. La Régie entend se concentrer sur le suivi des exigences contenues dans les décisions D-2008-019² et D-2007-08³.

POLITIQUE DE RABAIS

La Régie entend limiter l'examen de ce thème aux conclusions qu'elle a formulées dans le dernier dossier tarifaire du Transporteur :

« La Régie est ouverte à examiner une proposition ciblée portant sur un projet-pilote de mise à l'encan de quantités limitées en période hors pointe, accessible à tous les clients du Transporteur et à toutes les transactions. Le projet pilote pourrait prévoir, notamment :

- *L'adoption des heures hors pointe des réseaux voisins;*
- *Les modalités détaillées de mise à l'enchère de quantités limitées pour les services non fermes sur une base hebdomadaire ou mensuelle;*
- *La comptabilisation des informations sur les quantités réservées, leur durée, les prix applicables et les revenus qui en découleront »*⁴.

Ainsi, tout autre sujet que l'examen d'un projet pilote de politique de rabais est exclu de la présente audience.

² Dossier R-3640-2007, 15 février 2008, page 83.

³ Dossier R-3605-2006, 20 février 2007, page 52.

⁴ Décision D-2008-019, dossier R-3640-2007, 15 février 2008, page 93.

RÉPARTITION DES COÛTS

L'examen de ce thème portera sur l'application de la méthodologie de répartition des coûts retenue par la Régie dans la décision D-2006-66⁵ et les sujets mentionnés dans les conclusions formulées par la Régie dans le dernier dossier tarifaire du Transporteur⁶. Les sujets à débattre au présent dossier porteront ainsi sur :

- la conformité avec la méthodologie de répartition des coûts retenue par la Régie dans la décision D-2006-66⁷;
- la justification de l'hypothèse retenue par le Transporteur pour le facteur d'utilisation du service de point à point de long terme;
- la répartition du coût de l'interconnexion avec l'Ontario;
- le traitement du financement d'ajouts au réseau par des engagements d'achats donnant lieu à des achats de service de point à point de court terme.

COMPTE D'ÉCART DES REVENUS DE POINT À POINT

Concernant le compte d'écart des revenus de point à point, la Régie n'entend pas réexaminer les modalités qui ont fait l'objet d'une décision dans le dossier tarifaire précédent⁸. Seul le suivi de la décision D-2008-019⁹ fera l'objet des sujets à débattre.

POLITIQUE DES AJOUTS

La Régie entend traiter de ce sujet dans le présent dossier. Entre autres, elle inclut à l'ordre du jour de la présente audience les diverses préoccupations qu'elle a émises dans les décisions D-2007-141¹⁰, D-2008-030¹¹, D-2008-073¹² relatives à certains dossiers d'investissement et dans la décision D-2008-019¹³.

⁵ Dossier R-3549-2004, Phase II, 18 avril 2006.

⁶ Décision D-2008-019, dossier R-3640-2007, pages 88, 94 et 95.

⁷ Dossier R-3549-2004, Phase II, 18 avril 2006.

⁸ Décision D-2008-019, dossier R-3640-2007, 15 février 2008, pages 29 à 31.

⁹ Dossier R-3640-2007, 15 février 2008, pages 30 à 32.

¹⁰ Dossier R-3631-2007, 18 décembre 2007.

¹¹ Dossier R-3646-2007, 7 mars 2008.

¹² Dossier R-3656-2008, 21 mai 2008.

¹³ Dossier R-3640-2007, 15 février 2008.

CONTRIBUTION MAXIMALE DU TRANSPORTEUR POUR LES POSTES DE DÉPART

L'examen des contributions maximales du Transporteur pour les postes de départ se limitera aux suivis de la décision D-2008-036 rendue dans le dossier R-3626-2007 où la Régie s'exprimait comme suit :

« En ce qui concerne les cas où plus d'un palier de transformation est requis, la Régie comprend que le Transporteur entend parfaire ses connaissances relativement aux coûts des projets éoliens d'ici au printemps 2008. La Régie demande, en conséquence, au Transporteur de faire rapport sur les conclusions de son analyse et de sa réflexion en la matière dans son prochain dossier tarifaire.

Enfin, la Régie partage l'avis des intervenants sur l'importance de mettre à jour la Contribution, sur une base régulière. Un examen de l'évolution des coûts sous-jacents doit être effectué et les données devront être rendues disponibles dans le cadre des dossiers tarifaires du Transporteur »¹⁴.

Les sujets à débattre se limiteront donc, d'une part, à la mise à jour de la contribution des postes de départ et, d'autre part, à l'établissement de la contribution maximale du Transporteur dans le cas où plus d'un palier de transformation est requis. Tout débat de fond portant sur la méthode d'établissement de la contribution maximale du Transporteur pour les postes de départ ne nécessitant qu'un seul palier de transformation est exclu de la présente audience.

MARCHÉ HORS QUEBEC ET IMPACT SUR LES TARIFS ET CONDITIONS DES SERVICES DE TRANSPORT

Conformément à la décision D-2008-019, les impacts qui découlent des ordonnances 890 et 890A de la *Federal Energy Regulatory Commission* (FERC) sur la tarification et, le cas échéant, sur la répartition des coûts font partie des sujets à débattre.

Toutefois, concernant le texte des *Tarifs et conditions des services de transport*¹⁵ (Tarifs et conditions), un grand nombre de modifications proposées par le Transporteur sont justifiées par leur conformité à ces ordonnances.

¹⁴ Décision D-2008-036, dossier R-3626-2007, 14 mars 2008, page 13.

¹⁵ Approuvés par la Régie de l'énergie conformément à la décision D-2008-045, dossier R-3626-2007, en date du 1^{er} avril 2008.

Comme mentionné dans la décision D-2007-08¹⁶, la Régie s'attend à ce que les propositions de modifications du texte des Tarifs et conditions soient accompagnées d'une preuve suffisamment élaborée pour en comprendre la teneur et la portée.

Dans le cas sous étude, il n'est pas suffisant d'affirmer que la proposition de modifications est en conformité avec les ordonnances 890 et 890A de la FERC. Le Transporteur doit expliquer en quoi elle est conforme et ce qui justifie son inclusion au texte des Tarifs et conditions.

La Régie considère que la preuve au dossier est insuffisante pour permettre, à l'intérieur du présent calendrier d'audience, un examen adéquat des modifications proposées. Dans les circonstances, la Régie ne retient pas, dans l'immédiat, comme sujet à débattre, les modifications au texte des Tarifs et conditions qui ne sont justifiées que par l'harmonisation avec les ordonnances 890 et 890A de la FERC.

La Régie communiquera ultérieurement avec les participants pour déterminer le mode procédural le plus approprié pour le traitement de ce sujet.

SUIVI DES REPRÉSENTATIONS ANTÉRIEURES

Enfin, plusieurs intéressés ont l'intention de présenter un suivi de leurs représentations dans les dossiers antérieurs. La Régie considère que ce type d'exercice, le cas échéant, doit, pour être jugé pertinent, être succinct et en lien avec les sujets retenus au présent dossier.

3.2 OPINION SUR LES DEMANDES D'INTERVENTION ET BUDGETS

La Régie juge que tous les demandeurs de statut d'intervenant ont démontré leur intérêt à intervenir dans le présent dossier. Toutefois, la Régie émet les réserves et précisions suivantes.

De manière générale, la Régie observe que le total des frais prévus par les intéressés pour leur intervention dans le présent dossier est élevé. Il totalise plus de 700 000 \$.

À des fins d'efficacité du processus, la Régie invite les intéressés à échanger de sorte que soit favorisé, lorsque possible, le recours à une expertise commune.

¹⁶ Dossier R-3605-2006, 20 février 2007, page 78.

Pour ce qui est de la reconnaissance du statut d'expert, la Régie demande aux intervenants de compléter ou produire, le cas échéant, leur demande de reconnaissance de statut de témoin expert ou d'expert-conseil conformément à l'article 29 du *Règlement sur la procédure de la Régie de l'énergie*¹⁷ (le Règlement). La Régie s'attend, notamment, à ce que la description du mandat confié à l'expert soit suffisamment explicite et précise le lien avec les sujets à débattre. Toute contestation du Transporteur se fera par écrit, dans les délais prévus à l'article 30 du Règlement. À cet effet, les intervenants devront déposer leurs demandes de reconnaissance de statut d'expert au plus tard le **17 octobre 2008 à 12 h**.

GRAME

La Régie partage la position du Transporteur à l'effet que les sujets énumérés par le GRAME aux paragraphes 8 et 9 de sa demande, dont l'étude des investissements demandés par le Transporteur et des besoins d'investissements en pérennité des actifs, relèvent du dossier R-3670-2008. Ces sujets ne constituent pas des sujets à débattre au présent dossier.

En ce qui concerne le développement d'expertises en télécommunications, la Régie entend limiter le débat à l'examen de la conformité de la proposition du Transporteur avec l'exigence de la décision D-2008-019¹⁸.

Enfin, la Régie partage également le point de vue du Transporteur à l'effet que l'examen des mesures d'efficience du groupe Technologie déborde largement l'intérêt du GRAME. La Régie invite ce dernier à cibler, comme évoqué dans sa réplique, ses propositions à cet égard sur les sujets directement en lien avec son intérêt.

RNCREQ

En ce qui concerne la proposition de l'intervenant d'aborder la tarification du service horaire pendant les heures de pointe et hors pointe, la Régie n'entend pas reprendre, dans le présent dossier, le débat concernant la structure des tarifs de court terme. Elle est cependant ouverte à faire l'examen d'une proposition de projet pilote de politique de rabais qui s'appliquerait à la structure des tarifs existants.

¹⁷ (2006) 138 G.O. II, 2279.

¹⁸ Dossier R-3640-2007, 15 février 2008, page 70.

S.É./AQLPA

Compte tenu des thèmes admissibles que S.É./AQLPA entend aborder, la Régie considère excessif le montant des frais prévus. Elle se questionne sur la pertinence de trois expertises au dossier. Elle demande à l'intéressé de tenir compte des remarques qui suivent.

Bien que la prévision de la demande constitue un élément inhérent à un dossier tarifaire, la méthodologie de la prévision et les modalités du compte d'écart ont déjà fait l'objet de décisions antérieures.

Quant à la répartition du coût de service entre la charge locale et la charge de point à point, la Régie est d'opinion que S.É./AQLPA n'a pas démontré, dans sa demande d'intervention, un intérêt suffisant à cet égard.

Concernant le sujet relié au coût différentiel des pertes de transport associées au choix entre des variantes d'ajouts au réseau, l'intervenant n'a pas convaincu la Régie d'un lien suffisant entre cet enjeu et son intérêt. De plus, le fait qu'il ait été un intervenant dans le dossier R-3646-2007 ne saurait justifier, à lui seul, son intérêt à intervenir sur le sujet retenu au présent dossier.

Concernant la contribution maximale du Transporteur pour le remboursement des postes de départ, la Régie décrit à la section précédente les sujets à débattre. Elle demande donc à l'intervenant de s'y conformer.

3.3 CONFIDENTIALITÉ

Le Transporteur demande le traitement confidentiel des pièces suivantes :

- HQT-3, document 1.1 Rapport du groupe Accenture sur l'évolution de la maintenance;
- HQT-9, document 1.2 Schéma unifilaire du réseau et schémas d'écoulement de puissance;
- HQT-10, document 8.1 Schéma unifilaire joint normalement à une entente de raccordement concernant les projets de moins de 25 M\$.

Deux affirmations solennelles sont produites. L'une concerne la pièce HQT-3, document 1.1 et l'autre les pièces HQT-9, document 1.2 et HQT-10, document 8.1.

L'ACEF de Québec demande à la Régie de consulter, aux conditions que celle-ci jugera raisonnables et justes, les pièces HQT-9, document 1.2 et HQT-10, document 8.1. L'intervenante souhaite aussi pouvoir consulter la pièce HQT-3, document 1.1 ou, à tout le moins, disposer d'une version abrégée présentant objectivement l'état de la maintenance chez le Transporteur.

Le Transporteur soumet que, dans l'éventualité où la Régie accueille sa demande de traitement confidentiel, il permettrait, à certaines conditions, aux intervenants qui en feront la demande, d'accéder aux documents confidentiels en signant une entente de confidentialité et de non-divulgence avec le Transporteur selon les modalités établies dans les dossiers R-3592-2005, R-3606-2006, R-3631-2007, R-3640-2007 et R-3646-2007.

La Régie invite les intervenants à transmettre, le cas échéant, leurs commentaires sur les demandes de traitement confidentiel soumises, au plus tard le **16 septembre 2008 à 12 h**. Le Transporteur aura jusqu'au **18 septembre à 12 h** pour y répliquer.

3.4 CALENDRIER D'AUDIENCE

La Régie informe les participants de l'échéancier suivant :

ÉCHÉANCES	ÉTAPES DU PROCESSUS
25 septembre 2008, 12 h	Demandes de renseignements au Transporteur
14 octobre 2008, 12 h	Réponses du Transporteur aux demandes de renseignements
29 octobre 2008, 12 h	Preuve des intervenants
11 novembre 2008, 12 h	Demandes de renseignements aux intervenants
18 novembre 2008, 12 h	Réponses des intervenants aux demandes de renseignements
24 novembre 2008, 9 h	Début de l'audience

Pour ces motifs,

La Régie de l'énergie :

ACCORDE le statut d'intervenant à ACEF de Québec, AIEQ, AQCIE/CIFQ, EBMI, FCEI, GRAME, OC, RNCREQ, S.É./AQLPA, UC et UMQ avec les précisions énoncées à la présente décision;

FIXE le calendrier prévu à la section 3.4 de la présente décision.

Richard Carrier
Régisseur

Lucie Gervais
Régisseur

Jean-François Viau
Régisseur

Représentants :

- Association coopérative d'économie familiale de Québec (ACEF de Québec) représentée par M^e Denis Falardeau;
- Association de l'industrie électrique du Québec (AIEQ) représentée par M^e Sébastien Leblond;
- Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ) représenté par M^e Pierre Pelletier;
- Énergie Brookfield Marketing Inc. (EBMI) représentée par M^e Paule Hamelin et M^e Pierre Legault;
- Fédération canadienne de l'entreprise indépendante (FCEI) représentée par M^e André Turmel;
- Groupe de recherche appliquée en macroécologie (GRAME) représenté par M^e Geneviève Paquet;
- Option consommateurs (OC) représentée par M^e Stéphanie Lussier;
- Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ) représenté par M^e Annie Gariépy;
- Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (S.É./AQLPA) représenté par M^e Dominique Neuman;
- Union des consommateurs (UC) représentée par M^e Hélène Sicard;
- Union des municipalités du Québec (UMQ) représentée par M^e Steve Cadrin.

DÉCISION

QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2008-136	P-110-1565 P-110-1566 P-110-1597	23 octobre 2008
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PRÉSENTS :

Jean-Paul Théorêt
Richard Lassonde
Marc Turgeon
Régisseurs

Newfoundland and Labrador Hydro
Demanderesse

Régie de l'énergie
DOSSIER: 12-3669-2008 et phase 2
DÉPOSÉE EN AUDIENCE
Date: 9/05/2011
Pièces n°: 13-230

Hydro-Québec
Défenderesse

Décision interlocutoire

*Plaintes déposées en vertu de l'article 36 de la Loi sur la
Régie de l'énergie*

1. CONTEXTE

Le contexte et l'évolution de la procédure d'examen des plaintes P-110-1565, P-110-1566 et P-110-1597 déposées par Newfoundland and Labrador Hydro (NLH) contre Hydro-Québec dans ses activités de transport d'électricité (le Transporteur) sont expliqués en détail à la décision interlocutoire D-2008-121 du 24 septembre 2008.

La présente décision porte sur un différend entre les parties sur des réponses à des demandes de renseignements de NLH, datées respectivement des 29 août et 5 septembre 2008.

2. DEMANDE DE NLH

NLH demande¹ à la Régie de l'énergie (la Régie) d'ordonner au Transporteur de répondre, d'ici le 14 octobre 2008 ou dans un délai que la Régie pourra déterminer, aux questions qui lui ont été soumises par son expert, monsieur Robert Sinclair, les 29 août et 5 septembre 2008 ainsi qu'à celles soumises par NLH aux mêmes dates (les « Questions de NLH »).

Selon les commentaires de M. Robert Sinclair, le Transporteur n'aurait pas répondu adéquatement à certaines questions et certaines réponses nécessiteraient des clarifications².

3. POSITION DU TRANSPORTEUR

En réponse à cette demande d'ordonnance, le Transporteur soumet le 14 octobre 2008, par l'entremise de son procureur, M^e Éric Dunberry, un document daté du 22 septembre 2008 et coté HQT-2, Document 1 et un autre daté du 29 septembre 2008 et coté HQT-3, Document 1. Ces documents reprennent les Questions de NLH, les réponses du Transporteur, les commentaires de l'expert Sinclair en marge des réponses que ce dernier dit

¹ Lettre du 7 octobre 2008, dossier P-110-1565, pièce B-16.

² Voir textes joints à la lettre du 7 octobre 2008 intitulés « Comments on HQT partial or incomplete answers dated September 29, 2008 (HQT-2, Document 1) related to August 29 and September 5, 2008 Information Requests » et « Comments on HQT partial or incomplete answers dated September 29, 2008 (HQT-3, Document 1) related to September 5, 2008 Information Requests ».

être insatisfaisantes ou autrement incomplètes, et les commentaires du Transporteur sur ceux de l'expert Sinclair.

4. RÉPLIQUE DE NLH

Dans une lettre du 22 octobre 2008, NLH réitère sa demande d'ordonnance de répondre aux Questions de NLH suivantes : R 1b), R 1c), R 1g), R 1j), R 1l), R 1m), R 2.2), R 1a) et R 2a).

5. OPINION DE LA RÉGIE

Remarques préliminaires

Avant d'aborder les Questions de NLH et de décider si le Transporteur doit plus amplement y répondre, la Régie juge utile de rappeler certaines dispositions de la *Loi sur la Régie de l'énergie*³ (la Loi) applicables à l'examen d'une plainte :

« 98. Lorsque la Régie examine la plainte, elle vérifie si l'application des tarifs et des conditions de transport ou de distribution d'électricité ou l'application des tarifs et des conditions de fourniture, de transport, de livraison ou d'emmagasinage de gaz naturel a été suivie par le transporteur d'électricité ou le distributeur.

101. Lorsque la Régie considère la plainte fondée, elle ordonne au transporteur d'électricité ou au distributeur d'appliquer, dans le délai qu'elle fixe, les mesures qu'elle détermine concernant l'application des tarifs et des conditions; elle peut également en établir la date d'application. » (nous soulignons)

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

³ L.R.Q., c. R-6.01.

relève de sa responsabilité dans le respect des dispositions pertinentes des *Tarifs et conditions des services de transport d'Hydro-Québec*⁴ (Tarifs et conditions). Lorsqu'un différend survient sur une telle question, la Régie doit vérifier si les dispositions des Tarifs et conditions ont été correctement appliquées et, si tel n'est pas le cas, elle peut ordonner au Transporteur de remédier à la situation.

L'application des dispositions législatives citées plus haut implique que NLH a le fardeau de la preuve. NLH doit, dans un premier temps, par preuve ou argumentation, établir quelles sont les dispositions des Tarifs et conditions qui n'auraient pas été correctement appliquées par le Transporteur et, dans un deuxième temps, préciser les mesures que NLH veut voir ordonner au Transporteur pour que ces conditions soient correctement appliquées.

De son côté, le Transporteur peut réfuter, par preuve ou argument, les prétentions de NLH quant à la façon dont il a appliqué les Tarifs et conditions.

À ce stade du traitement des plaintes, il pourrait s'avérer prématuré d'ordonner au Transporteur de fournir certaines informations additionnelles à NLH sans qu'ait été démontré que le Transporteur a l'obligation de les fournir en vertu des dispositions pertinentes des Tarifs et conditions. Cela équivaldrait à préjuger du fond des questions soulevées par ces plaintes.

D'ici l'audition des plaintes, la Régie a établi un calendrier où il est prévu que les parties pourront se transmettre des demandes de renseignements. Dans le contexte évoqué plus haut, cela devrait se limiter à faire préciser ce qui n'est pas clair dans un document produit par les parties ou ce qui peut y être ajouté, sans toutefois que cela amène la Régie à devoir trancher une objection portant sur une question de fond comme celle de savoir si le Transporteur a l'obligation de fournir tels renseignements à NLH en vertu des Tarifs et conditions. Ces questions de fond doivent être tranchées en toute connaissance de cause en cours ou à la suite de l'audition complète des parties.

⁴ Approuvés par la Régie de l'énergie conformément à la décision D-2007-34, dossier R-3605-2006, en date du 30 mars 2007.

Réponses aux Questions de NLH

Les Questions de NLH portent toutes sur la version anglaise d'un document intitulé « Rapport préliminaire d'étude d'impact Scénario 1, Demande de service de transport de Newfoundland & Labrador Hydro pour le Bas Churchill, Centrales de Gull Island et Muskrat Falls, Demande #101, 4 mai 2007 ».

Questions de NLH du 29 août 2008

Les réponses R 1a), R 1b), R 1c), R 1f), R 1g), R 1j), R 1l), R 1m) et R 2a) du Transporteur semblent satisfaisantes et ne justifient pas, à ce stade préliminaire du processus d'examen des plaintes, une ordonnance obligeant le Transporteur à fournir d'autres informations à cet égard. La Régie réserve le droit des parties d'établir ou de contester, lors de l'audition au fond des plaintes, l'obligation du Transporteur de fournir de plus amples données à cet égard en application des Tarifs et conditions.

Quant aux réponses R 1d), R 1e), R 1h), R 1i) et R 1k), elles ne font pas l'objet de commentaires ou d'objection de NLH.

Questions de NLH du 5 septembre 2008

Les réponses R 2.1), R 2.2) et R 2.3) du Transporteur semblent satisfaisantes et ne justifient pas, à ce stade préliminaire du processus d'examen des plaintes, une ordonnance obligeant le Transporteur à fournir d'autres informations à cet égard. La Régie réserve le droit des parties d'établir ou de contester, lors de l'audition au fond des plaintes, l'obligation du Transporteur de fournir plus amples données à cet égard en application des Tarifs et conditions.

Quant aux réponses R 1a) et R 1b), elles ne font pas l'objet de commentaires ou d'objection de NLH.

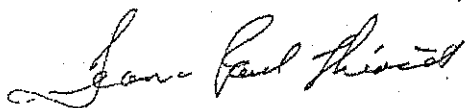
Pour ces motifs,

La Régie de l'énergie :

REJETTE la demande de NLH;

MAINTIENT le calendrier d'examen des plaintes établi par la décision D-2008-128;

RÉSERVE les droits des parties d'établir ou de contester, lors de l'audition au fond des plaintes, l'obligation du Transporteur de fournir, en application des Tarifs et conditions, plus amples données relativement aux questions mentionnées à la présente décision.



Jean-Paul Théorêt
Régisseur



Richard Lassonde
Régisseur



Marc Turgeon
Régisseur

NE
COPIE CONFORME

Newfoundland and Labrador Hydro représentée par M^e André Turmel;
Hydro-Québec représentée par M^e Éric Dunberry.



IN THE MATTER OF

**A COMPLAINT BY TRANSCANADA ENERGY LTD.
REGARDING THE SERVICE AGREEMENT WITH
BRITISH COLUMBIA TRANSMISSION CORPORATION
FOR LONG TERM FIRM POINT TO POINT
TRANSMISSION SERVICE**

Régie de l'énergie
DOSSIER: R-3669-2008
DÉPOSÉE EN AUDIENCE Phase 2
Date: 21/04/2011
Pièces n°: B-216

DECISION

September 10, 2009

Before:

A.A. Rhodes, Panel Chair/Commissioner
L.A. O'Hara, Commissioner
P.E. Vivian, Commissioner

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1.0 INTRODUCTION

This proceeding concerns the sale of long term firm point-to-point transmission service by British Columbia Transmission Corporation to users including its affiliates British Columbia Hydro and Power Authority and Powerex Corporation as well as the Complainant, TransCanada Energy Ltd. and NorthPoint Energy Solutions Inc. on the BC to Alberta path. TransAlta Energy Marketing Corp. is a potential customer, seeking transmission service on the path.

TransCanada and NorthPoint take the position that the transmission capacity has been oversold as conditions in Alberta frequently limit the use of the path in BC, with the result that these customers are often unable to make use of the transmission capacity which they purchased. TransCanada has filed a formal Complaint with the British Columbia Utilities Commission which NorthPoint supports. They submit that the appropriate level of transmission capacity which should be offered for sale is 480 MW, which was the limit in place prior to December 1, 2007, when BCTC made the decision to increase it to 785 MW, following a System Impact Study. TransAlta, on the other hand, submits that BCTC should offer more capacity for sale, up to the Western Electricity Coordinating Council path rating of 1,200 MW, to allow it access to the system. BCTC takes the position that its Open Access Transmission Tariff and published Business Practices require it to release Firm capacity on its transmission system on a first-come, first-served basis or to construct Network Upgrades to provide Long Term Firm Point-to-Point transmission service but that in this case a "pragmatic approach" favours using the existing capacity figure of 785 MW. BCTC therefore seeks an amendment to its tariff to limit capacity on the BC>AB path to 785 MW until such time as Alberta upgrades its system to accept the additional transmission which can flow over the BC system. BC Hydro and Powerex support BCTC's approach. The Joint Industry Electricity Steering Committee favours selling as much capacity as possible, but does not argue for a particular figure.

The procedural background and context are set out in Appendix A.

2.0 HISTORICAL CONTEXT AND REGULATORY FRAMEWORK

The British Columbia Transmission Corporation ("BCTC") is a provincial crown corporation which was created in 2003 to manage the transmission assets owned and previously operated by the British Columbia Hydro and Power Authority ("BC Hydro").

BCTC first applied for an Open Access Transmission Tariff ("OATT") in August, 2004, to replace BC Hydro's Wholesale Transmission Services ("WTS") Tariff, which was the tariff applicable to the provision of open access transmission service on BC Hydro's transmission system prior to the OATT. The OATT application was approved by the Commission on June 20, 2005.

Transmission services are scheduled by registered users through BCTC's Open Access Same-Time Information System ("OASIS"). OASIS was developed to comply with requirements in the U.S. imposed by the Federal Energy Regulatory Commission.

2.1 Regulatory Bodies

There are a number of relevant regulatory agencies in North America. BCTC voluntarily complies with many regulations and guidelines of US regulatory agencies, but is itself regulated by the British Columbia Utilities Commission ("BCUC", "Commission").

2.1.1 FERC

The Federal Energy Regulatory Commission ("FERC") is the agency responsible to regulate interstate transmission of natural gas, oil and electricity in the United States. The OATT itself, like the WTS before it, is modelled on the FERC pro forma tariff, which was established by FERC Order 888. The FERC pro forma tariff was implemented in the U.S. in 1996 to remedy a perceived problem of "undue discrimination" and was designed to "prohibit public utilities from using their monopoly power over transmission to unduly discriminate against others." (Exhibit B1-17, BCUC 2.20.1, Attachment-FERC Notice of Proposed Rulemaking, March 19, 2009, p. 4) Examples of areas

where undue discrimination might occur relate to situations where there is lack of clarity in assumptions, calculations, models etc. which could allow for the transmission provider to vary a calculation, model or assumption etc. depending upon the particular customer. (Exhibit B1-17, BCUC 2.29.1 Attachment-FERC Notice of Proposed Rulemaking, March 19, 2009, pp. 55, 57, 60)

In order to remedy what were viewed in the U.S. as continuing "opportunities for undue discrimination" under the Order 888 pro forma OATT, FERC issued Order 890 in February, 2007 to amend the tariff. The stated purposes of Order 890 involved "... (1) strengthening the pro forma tariff to remedy opportunities for undue discrimination, (2) providing greater specificity to facilitate FERC's enforcement and monitoring; and (3) increasing the transparency of the rules for planning and use of the transmission system." (Exhibit B1-1, p. 14, referencing Order No. 890 cover page summary)

FERC reviewed the historical background to reforms in the U.S., including Order 888, in Order 890. The over-riding concern behind the reforms related to the change in the industry structure in the U.S. in the 1970s which saw increased sources of different types of small generation with lower cost going up against the market power of existing vertically-integrated utilities with their ability to limit access to their transmission facilities, thereby favouring their own, more expensive generation. "The major concern of the Commission was whether the seller or its affiliates could limit competition and thereby drive up prices." (FERC Order 890, p. 9)

2.1.2 NERC

BCTC also plans and operates the transmission system in accordance with its obligations as a member of the North American Electric Reliability Corporation ("NERC") and its regional reliability organization, the Western Electricity Coordinating Council ("WECC").

NERC is the body responsible for setting reliability standards for the electricity industry in North America. NERC is not concerned with commercial terms and conditions of transmission service, which is FERC's domain. NERC has been approved by FERC as the electricity reliability organization

in the U.S. However, NERC's recommended standards are subject to approval by FERC before they become mandatory in the U.S. Similarly, NERC's proposed reliability standards are subject to approval by the BCUC in British Columbia.

2.1.3 WECC

The Western Electricity Coordinating Council ("WECC") is a regional organization, responsible for coordinating and promoting electrical system reliability in the Western Interconnection. BCTC is a member of WECC and participates, with the Alberta Electric System Operator ("AESO"), in joint studies to determine, for example, path ratings between the two jurisdictions. (BCTC Evidence, T3: 340) WECC path ratings are "Maximum Transfer Capabilities" and do not define the Firm Total Transfer Capability of the path. (Exhibit B1-1, p. 129)

2.1.4 BCUC

The British Columbia Utilities Commission is the regulatory body in British Columbia which regulates BCTC. BCUC has the mandate to approve the OATT and any proposed amendments and to monitor BCTC's compliance with its tariff. It is agreed by the parties that BCUC also has the jurisdiction to hear the TCE Complaint.

2.2 Reciprocity

BCTC's use of its OATT and compliance with FERC principles and NERC and WECC enable it to participate in U.S. market-dominated transactions. BCTC expressed the view that if it "fails to meet [FERC's] comparability standard Powerex's ability to maintain its authority to trade energy in the United States at market-based rates could be affected." (Exhibit B1-7, BCUC 1.34.1)

In fact, section 4.5(b) of the Master Agreement dated November 12, 2003 between BC Hydro and BCTC provides:

"BCTC will at all times seek to ensure that the terms and conditions of the OATT, BCTC's business practices and governance (for example, independence from generation owners), or any of them:

(b) subject to the approval of the Commission, meet the requirements of FERC, other regulators and other transmission operators to the extent necessary to permit continued access at market-based rates by electricity market participants in British Columbia to the United States and other Canadian electricity markets outside of British Columbia, including by BC Hydro and Powerex." (Exhibit B2-1, p.3, FN 1; Exhibit B1-7, BCUC 1.34.1)

BCTC is not otherwise obliged to comply with FERC as BCTC is not a transmission provider within FERC's jurisdiction. (Exhibit B1-7, BCUC 1.16.2)

This reciprocity requirement was summarized by the U.S. Court of Appeals for the District of Columbia Circuit in *Consumers Energy Company v. FERC*, No. 03-1162 (D.C. Cir. May, 2004) at page 2 where Roberts, Circuit Judge stated, for the Court:

"FERC does not presume to tell foreign transmission-owning utilities what tariffs they must file. If a marketing affiliate of such a utility wants to sell power at market-based rates in the United States, however, the utility must offer transmission service *comparable* to that required of a utility in the United States. Just as a domestic transmission-owning utility must allow competitors of its marketing affiliate to use its transmission services on a non-discriminatory basis to compete with the marketing affiliate, so too a foreign transmission-owning utility must allow companies that would compete with its marketing affiliate to use its transmission services to reach the United States market and compete on a level playing field with its marketing affiliate." (emphasis in original)

Roberts, Circuit Judge further stated, at p. 15:

"We think it reasonable for the Commission to acknowledge the reality of an international border in deciding whether to insist on compliance with the minutiae of its regulatory requirements; it was certainly open to FERC to decide that a flexible approach requiring comparability on a case-by-case basis rather than letter-for-letter compliance across-the-board better accommodates jurisdictional limits and promotion of competitive markets for United States loads."

FERC itself explained, in its Order dated January 15, 1997 Rejecting Market Based Rates Without Prejudice for Powerex:

"[t]he Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. In order to demonstrate the absence or mitigation of market power, a transmission-owning public utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.

FERC further explained:

"...our concerns are more limited for foreign transmission-owning entities than for transmission-owning entities in the United States. As originally stated in Energy Alliance, "The Commission's concern is not transmission service to serve Canadian loads – it is transmission to serve United States loads." (73 FERC at 61,030). In TransAlta, the Commission expanded its concerns to include access for United States competitors into Canadian markets on a reciprocal basis (75 FERC at 61,875). Thus, the Commission seeks to assure reciprocal service into and out of Canada when Canadian entities seek access to United States markets, ["This would include wheeling-through service needed to accommodate service for United States or Canadian companies into and out of Canada] but the Commission is not seeking to open intra-Canada electric markets through the imposition of open access tariffs for transactions wholly within Canada." (78 FERC 61,024 at pp. 3, 6)

FERC denied Powerex's market-based rate application in that case as it had not demonstrated adequate mitigation of its transmission market power. (This case was decided prior to the creation of BCTC.)

BCTC has stated, however, that, in its view, "FERC authority relating to reciprocity would allow BCTC's OATT to include a limit on Firm sales on the BC>AB path on a prospective basis...because it would not prevent customers from reaching the United States market on a comparable basis".

(BCTC Argument, p. 64) In fact, as noted above, BCTC is seeking an order amending Attachment C of its tariff to limit sales of transmission service to a specific MW amount (785). (Exhibit B1-1, p. 122)

BCTC also testified that the principal reason that BCTC adopted a tariff that follows FERC was not for reciprocity reasons but to be part of the Western Electricity Coordinated system. (Evidence of BCTC, T3: 349)

Commission Panel Discussion

Notwithstanding BCTC's evidence that reciprocity is not the principal reason that it adopted the FERC pro forma tariff, the Commission Panel acknowledges the importance of reciprocity to BCTC and its affiliates and has made every effort to respect FERC principles and guidance as provided in FERC's decisions where they are relevant to circumstances in this jurisdiction. However, the Commission is of the view that this jurisdiction is unique in many respects and that some FERC principles may or may not be properly applicable. The Commission Panel is of the view that the evil that FERC was and is continuing to try to eliminate with the use of the OATT and the subsequent amendments to it was a transmission provider keeping available capacity for itself or a related entity, to the exclusion of its competitors, in an effort to exercise market power. This situation has resulted in under-utilization of the transmission system, price discrimination, lack of transparency and the potential for monopoly pricing of electricity in the United States. In contrast, in this case the allegations relate to BCTC's potential overselling of the transmission system on the BC>AB path, arguably to its own benefit. There is no allegation that BCTC inappropriately favoured its affiliate. (Trans Canada Reply, p. 24) One result of the release of additional LTF PTP capacity is an effective increase in the tariff – with the result that pricing becomes less transparent. This is addressed further in Section 4.2.

3.0 BACKGROUND TO COMPLAINT

TransCanada Energy Ltd. ("TCE" or "TransCanada") has a Service Agreement with BCTC dated December 18, 2006 for Long Term Firm Point-to-Point ("LTF PTP") Transmission Service over the BC to Alberta ("BC>AB") path. The Service Agreement is for a period of five years and two months, commencing on January 1, 2007 and terminating on March 1, 2012. It contemplates a maximum of 100 MW of capacity and 2400 MWh of energy to be transmitted per day. The Service Agreement is contained as an attachment to BCTC's OATT, which contains additional standard form terms and conditions governing the relationship between the parties. (TCE Complaint, Exhibit B2-1, p. 1)

The BC>Alberta path is made up of a single 500kV transmission line between Cranbrook, BC and Langdon, Alberta, and two 138kV lines between Natal, BC and Coleman, Alberta and between Fording Coal at Elk River, BC and Pocaterra, Alberta. (Exhibit B1-11, Attachment 3, BCTC Report No. SPA 2007-85 November 2007, p. 8)

TCE has been a customer of BCTC and, prior to that, BC Hydro, since 1996. (TCE Evidence, T2: 165) Its current Service Agreement is the result of its having exercised a rollover right contained in an earlier service agreement which was executed on July 13, 2004, in December of 2006. (TCE Argument, p. 1)

In May of 2004 BCTC announced that, effective August 01, 2004, new Firm Total Transfer Capability ("TTC") limits would be in effect and that the Firm TTC limit on the BC>AB path would increase from 210 MW to 545 MW. (Exhibit B2-6, BCUC 1.16.1)

On June 28, 2004 BCTC posted a System Impact Study on its website which concluded that Long-Term Firm Point-to-Point Transmission Service was available on the BC>AB path: (Exhibit B2-6, BCUC 1.16.1)

Also on June 28, 2004 BCTC posted a bulletin entitled "TTC on the BC-Alberta Intertie". The bulletin was issued in response to a customer enquiry and indicated that BCTC had performed an analysis

of historical hourly TTC on the BC > AB path during the January 1, 1999 to June 1, 2004 period which indicated that "[a]lthough Real-time TTC on the BC > AB path may be less than 480 MW (545 MW – 65 MW TRM [Transmission Reliability Margin]) at times due to system conditions, BCTC found that 93% of the hours had hourly TTC, after accounting for TRM, greater than 480 MW. This data supports BCTC's 545 MW Firm TTC based on the methodology in Section 2.2.4 of the Business Practices." (Exhibit B2-6, BCUC 1.16.1; Evidence of BCTC T3: 374-375)

In April 2007 BCTC conducted a further System Impact Study in part to determine what, if any, Network Upgrades would be required to increase Firm PTP ATC from BC to Alberta. The study did not look at contingencies in the Alberta system but rather assumed that the Alberta system was capable of importing the transferred amounts with no resultant problems. The study found that the 138 kV ties to Alberta would be overloaded with an increase in transfer levels but that if the ties were opened to force all exports to flow on the Cranbrook – Langdon ("CBK-LGN") 500 kV line, and therefore operated in an "open loop configuration" during periods of heavy transfer, the overloading conditions could be avoided. The study concluded that, as long as the 138 kV ties were operated, as noted above, in an open loop configuration, the system could support an increase from 545 MW FTTC to 850 MW FTTC with no Network Upgrades. An increase from 850 MW to the WECC path rating of 1200 MW would require the system to be reinforced. (Exhibit B1-11, Attachment 3, BCTC Report No. SPA 2007-88 April 3, 2007, pp. 2-3) The study therefore concluded, "Not considering the limitations within the Alberta system, the BCTC system is capable of delivering 1200 MW to the BC Alberta border when adequate reactive reinforcement is provided." (Exhibit B1-11, Attachment 3 – BCTC Report No. SPA 2007-88 April 3, 2007, p. 4)

BCTC held an "Open Season" in July, 2007, which invited bids for transmission service over the BC > AB path. The purpose of an Open Season is to allow BCTC to study a group of transmission requests together to improve efficiency and share cost responsibility for any associated network upgrades among participants. TCE asked BCTC whether there was any downside to it not participating given that its current requests were in "received" status and was advised that requests in the queue ahead of the commencement of the Open Season Period would be

processed in that queue priority, ahead of the Open Season. TCE decided not to participate in the Open Season. (Exhibit B2-6, BCUC 1.16.1)

A further System Impact Study conducted by BCTC and published in November 2007, which again specifically assumed Alberta to be capable of importing 1200 MW from BC, confirmed the above conclusions. The study noted that the open loop configuration required to avoid overloading the 138 kV ties at transfers above 550 MW would reduce the reliability for Elk Valley Coal, Elkford, Cranbrook Regional Hospital and Fording Coal as opposed to when the ties were operated in a looped configuration. (Exhibit B1-11, Attachment 3 – BCTC Report No. SPA 2007-85, pp. 7, 10) BCTC takes the position, however, that although the reliability of supply is slightly lower with the open ties, this configuration is nothing out of the ordinary and is “not an unacceptable practice”. (T3: 435-436)

Commencing in December, 2007, BCTC sold an additional 125 MW of LTF PTP transmission service on the BC>AB path, bringing the total to 605 MW. It then sold a further 180 MW of LTF PTP transmission service commencing in January, 2008 to bring the total to 785 MW. As at January 01, 2008, 785 MW of LTF PTP transmission service had been sold under ten contracts for LTF PTP transmission service to four customers: BC Hydro, TCE, NorthPoint Energy Solutions Inc. (“NorthPoint”) and Cargill Power Markets LLC. (“Cargill”). The increased transmission capacity of 305 MW was taken by BC Hydro (280 MW) and Cargill (25 MW). Cargill was the only new customer to purchase transmission service following the December, 2007 increase. Its contract has an end date of July 31, 2009 and it has no rollover right but is indicated as having “Partial Service under Study”. (Exhibit B1-1, pp. 129-130; Exhibit B1-7, BCUC 1.42.1)

The following table shows the LTF PTP Service Agreements on the BC>AB path as of the date of the Application, November 21, 2008.

Table 1
Current LTF PTP Service Agreements on BC>AB Path

	Customer	Firm Capacity (MW)	First Service Start Date on BC>AB Path (Under Initial Service Agreement)	Contract Date of Current Service Agreement	Service Start Date Under Current Service Agreement	Service End Date ¹⁹⁷ Under Current Service Agreement	Rollover Right
1	BC Hydro	50	1 Jan 2000	24 May 2007	1 July 2007	31 Dec 2008	Yes
2	BC Hydro	160	1 July 2001	27 May 2008	1 July 2008	31 July 2012	Yes
3	BC Hydro	120	1 Dec 2006	17 Oct 2007	1 Dec 2007	31 Dec 2008	Yes
4	BC Hydro	50	1 Dec 2007	30 Nov 2007	1 Dec 2007	31 Dec 2011	Yes
5	BC Hydro	50	1 Dec 2007	30 Nov 2007	1 Dec 2007	31 Dec 2011	Yes
6	BC Hydro	180	1 Jan 2008	28 Dec 2007	1 Jan 2008	31 Dec 2008	No
7	TCE	100	1 Sep 2004	18 Dec 2006	1 Jan 2007	29 Feb 2012	Yes
8	NorthPoint	25	1 Jan 2006	21 Dec 2006	1 Jan 2007	31 Dec 2008 ¹⁹⁸	Yes
9	NorthPoint	25	1 Jan 2006	21 Dec 2006	1 Jan 2007	31 Dec 2008 ¹⁹⁹	Yes
10	Cargill	25	1 Dec 2007	30 Nov 2007	1 Dec 2007	31 July 2009	Partial Service under Study
11	Total	785					

Source: Exhibit B1-1, Table 6-1, p. 130

On June 3, 2008 BCTC applied to the BCUC for approval to temporarily suspend the release of Firm Available Transfer Capacity on the BC>AB path and to suspend the Facilities Study related to that path until its next OATT Application. That Application was approved by BCUC Order G-110-08 issued on July 3, 2008.

TCE filed its Complaint on October 9, 2008.

As part of the instant OATT amendment application dated November 21, 2008, and in recognition of the fact that some customers might argue that the 785 MW limit in place is too high, BCTC sought an interim order allowing it to include a condition on rollover requests for BC Hydro Service Agreements dated May 24, 2007 and October 17, 2007 (both due to expire on December 31, 2008 for amounts of 50 MW and 120 MW respectively) and any queued requests for Firm ATC coming available on the BC>AB Path on January 1, 2009 (180 MW from BC Hydro's contract due to expire on December 31, 2008 with no rollover rights) stating:

"This Service Agreement is subject to a further order of the British Columbia Utilities Commission in the matter of the 'British Columbia Transmission Corporation Application to Amend the Open Access Transmission Tariff' filed on 21 November 2008". (Exhibit B1-1 pp. 122-124; 149-153)

Commission Order G-175-08 approved the inclusion of the condition, as requested. Thus, as of January 1, 2009 there are contracts for 350 MW of transmission service bearing the above subject condition.

Parties in the queue currently awaiting the release of additional LTF PTP capacity include TransAlta. Table 2 shows the positions of the various parties in respect of the queue.

Table 2
Queue Requests on US – AESO and BC – AESO

OASIS	Customer	Path	Status	Capacity	Time Stamp	Start Time	Stop Time	Term (years)	Comments
70974668	Cargill	BPAT - AESO	PARTIAL	25.00	28-Aug-06	01-Jan-07	01-Jan-11	4	Partial to 1-Aug-09. Study suspended per BCUC ruling 8-July-08 (note 1)
71086993	NorthPoint	BPAT - AESO	STUDY	25.00	09-Nov-06	01-Jan-09	01-Jan-11	2	Study suspended per BCUC ruling 8-July-08
71086996	NorthPoint	BPAT - AESO	STUDY	25.00	09-Nov-06	01-Jan-09	01-Jan-11	2	Study suspended per BCUC ruling 8-July-08
71087026	BC Hydro	BPAT - AESO	STUDY	200.00	09-Nov-06	01-Jan-09	01-Jan-19	10	Study suspended per BCUC ruling 8-July-08
71087057	BC Hydro	BCTC - AESO	STUDY	200.00	09-Nov-06	01-Jan-11	01-Jan-21	10	Study suspended per BCUC ruling 8-July-08
71088297	BC Hydro	BCTC - AESO	PARTIAL	200.00	10-Nov-06	01-Jan-08	01-Jan-11	3	Partial to 1-Jan-09, 180 MW. Study suspended 8-July-08 (note 2)
71133341	Cargill	BPAT - AESO	STUDY	50.00	07-Dec-06	01-Jan-09	01-Jan-10	1	Study suspended per BCUC ruling 8-July-08
71133343	Cargill	BPAT - AESO	STUDY	50.00	07-Dec-06	01-Jan-09	01-Jan-10	1	Study suspended per BCUC ruling 8-July-08
71133348	Cargill	BPAT - AESO	STUDY	50.00	07-Dec-06	01-Jan-10	01-Jan-11	1	Study suspended per BCUC ruling 8-July-08
71133351	Cargill	BPAT - AESO	STUDY	50.00	07-Dec-06	01-Jan-10	01-Jan-11	1	Study suspended per BCUC ruling 8-July-08
71145601	TCE	BPAT - AESO	RECEIVED	100.00	15-Dec-06	01-Mar-12	01-Mar-13	1	N/A
71145604	TCE	BPAT - AESO	RECEIVED	100.00	15-Dec-06	01-Mar-12	01-Mar-14	2	N/A
71145605	TCE	BPAT - AESO	RECEIVED	100.00	15-Dec-06	01-Mar-12	01-Mar-17	5	N/A
71145606	TCE	BPAT - AESO	RECEIVED	100.00	15-Dec-06	01-Mar-12	01-Mar-15	3	N/A
71150844	Cargill	BPAT - AESO	STUDY	50.00	19-Dec-06	01-Jan-11	01-Jan-12	1	Study suspended per BCUC ruling 8-July-08
71150650	Cargill	BPAT - AESO	STUDY	50.00	19-Dec-06	01-Oct-11	01-Oct-17	6	Study suspended per BCUC ruling 8-July-08

OASIS	Customer	Path	Status	Capacity	Time Stamp	Start Time	Stop Time	Term (years)	Comments
71505520	NorthPoint	BPAT - AESO	STUDY	25.00	18-Jul-07	01-Jan-09	01-Jan-16	7	Study suspended per BCUC ruling 8-July-08
71505525	NorthPoint	BPAT - AESO	STUDY	25.00	18-Jul-07	01-Jan-09	01-Jan-16	7	Study suspended per BCUC ruling 8-July-08
71512624	Candela	BPAT - AESO	STUDY	25.00	23-Jul-07	01-Jan-08	01-Jan-10	2	Study suspended per BCUC ruling 8-July-08
71657256	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jul-08	01-Jul-13	5	Study suspended per BCUC ruling 8-July-08
71657257	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jul-08	01-Jul-13	5	Study suspended per BCUC ruling 8-July-08
71657258	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jul-08	01-Jul-13	5	Study suspended per BCUC ruling 8-July-08
71657259	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-09	01-Jan-14	5	Study suspended per BCUC ruling 8-July-08
71657260	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-09	01-Jan-14	5	Study suspended per BCUC ruling 8-July-08
71657261	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-09	01-Jan-14	5	Study suspended per BCUC ruling 8-July-08
71657262	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-10	01-Jan-15	5	Study suspended per BCUC ruling 8-July-08
71657263	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-10	01-Jan-15	5	Study suspended per BCUC ruling 8-July-08
71657264	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-10	01-Jan-15	5	Study suspended per BCUC ruling 8-July-08
71657265	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-11	01-Jan-16	5	Study suspended per BCUC ruling 8-July-08
71657266	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-11	01-Jan-16	5	Study suspended per BCUC ruling 8-July-08
71657267	TransAlta	BPAT - AESO	STUDY	100.00	12-Oct-07	01-Jan-11	01-Jan-16	5	Study suspended per BCUC ruling 8-July-08
			Total:	2650.00					

1

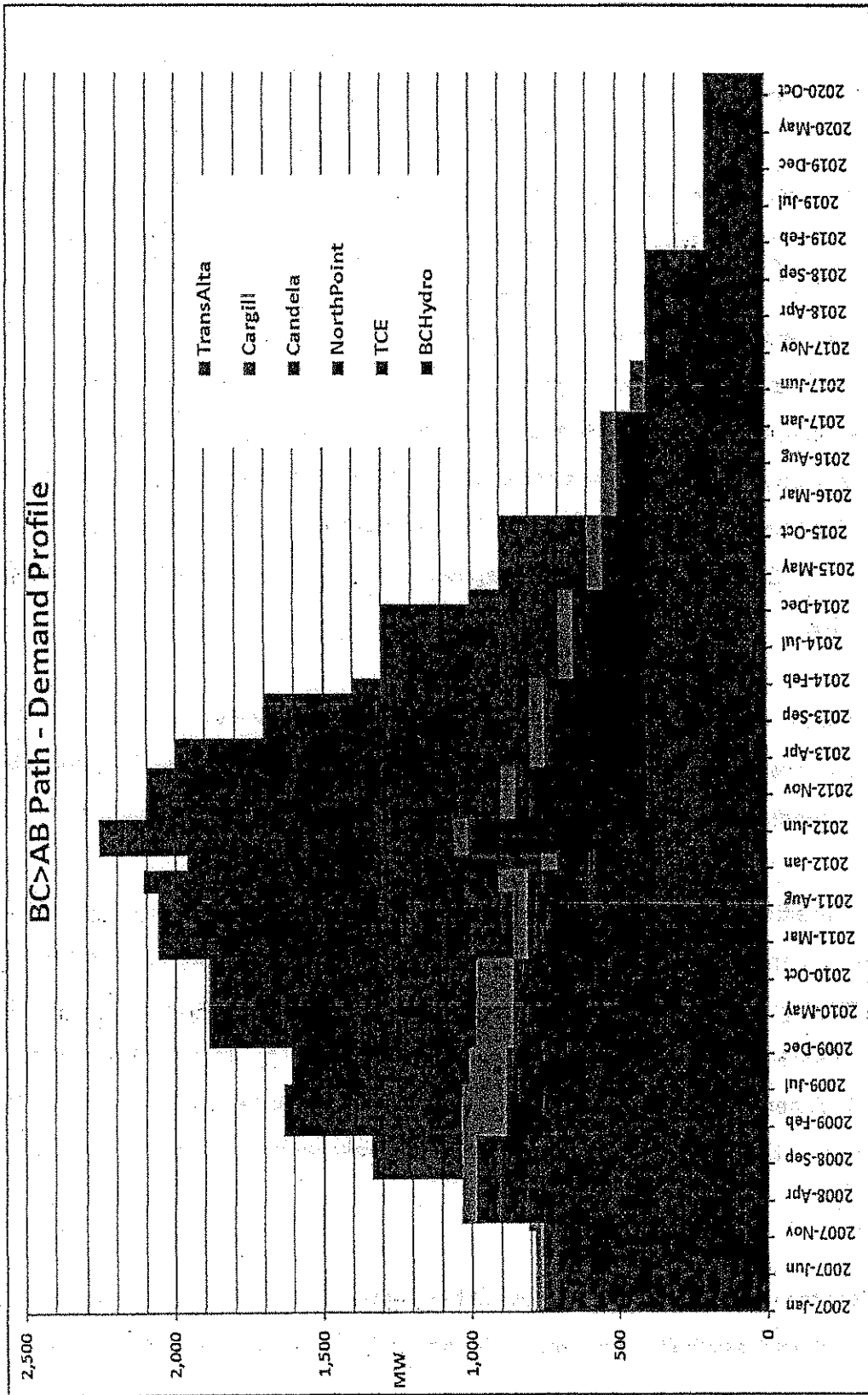
2 Note 1: Same as request on line 10 of Table 6-1.

3 Note 2: Same as request on line 6 of Table 6-1.

Source: Exhibit B1-1, Attachment 6-1, pp. 152-153

The queue shows that the parties with contracts dated January 1, 2009 and later containing the subject condition include: NorthPoint (50 MW) and BC Hydro (300 MW). NorthPoint's witness testified that it purchased an additional 50 MW of transmission capacity as a "hedge" to protect the value of the 50 MW of capacity which it already owned prior to December 01, 2007. (T3: 284-285, 288) (See also Exhibit B1-7, TCE 1.6.2)

The following graph depicts the demand for transmission service (MW), by customer, by requested start and end dates.



(Source: Compiled from Exhibit B1-1, Table 6-1, p. 130, Attachment 6-1, pp. 152-153. This graph is provided for illustrative purposes only.)

4.0 TCE COMPLAINT

In essence, TCE's Complaint is that BCTC does not take into account the amount of energy that can actually flow over its system when determining how much LTF PTP capacity it can offer for sale. TCE submits that BCTC ought not to have released additional LTF PTP capacity on its system on the BC>AB path in December 2007/January 2008 (from 480 MW to 785 MW) when it knew that its existing LTF PTP customers would be subjected to increased curtailment and thus, loss of market share to subsequent, new customers, due to the inability of the Alberta system to accept the increased transmission during peak transfer periods. In NorthPoint's words, "[t]his is a case about overselling." (NorthPoint Argument, para. 1.01) TCE describes its complaint as focussing "on the means by which BCTC determines how much long-term firm point-to-point transmission service it can sell." (TCE Reply, p. 9)

BCTC argues that the Complaint must be determined on the basis of whether it followed its OATT in making 785 MW of capacity available to customers in its queue on a first-come, first-served basis. If it did, BCTC submits that the Complaint must be dismissed. (BCTC Argument, pp. 1-2)

BCTC takes the position that its actions in calculating and releasing additional Firm capacity on the BC>AB path were a transparent and consistent application of its OATT and its published Business Practices. (BCTC Argument, p. 3) However, in recognition of the fact that the current situation in Alberta is a limiting factor in terms of transmission flowing over the BC>AB path, BCTC seeks, as part of its OATT Amendment Application, to depart from what it believes is the letter of its existing tariff and to restrict the amount of transmission capacity available for sale over the path, pending upgrades in Alberta.

BCTC also raises the issue of the amount to which the transmission capacity for sale on the BC>AB path should be limited, assuming that a limit is determined to be a reasonable temporary solution to the problem.

TCE takes the position that the manner in which BCTC determines whether LFT PTP transmission service is available does not accord with FERC principles. TCE agrees that, to the extent that BCTC followed the provisions of its OATT in determining the amount of LTF PTP transmission service available for sale, its OATT must be amended to accord with FERC principles. (TCE Reply, p. 2)

4.1 Issues

In determining whether BCTC did, in fact, follow its OATT, there are a number of issues which have been brought forward and require consideration. These issues include: what is the product which TCE bought and alleges is being compromised due to overselling? In other words, what is "firm transmission service"? Secondly, as additional firm transmission service is only released when there is "Available Transfer Capability" or "ATC" (which is, by definition, above and beyond already committed uses), how is it calculated and should the calculation consider constraints in a neighbouring jurisdiction? If the calculation itself need not consider such constraints, should they be considered in any event as part of the overall planning process and/or relevant FERC principles? These issues must all be addressed in the context of the industry structure as a whole.

4.1.1 Industry Structure

4.1.1.1 British Columbia and Other OATT Jurisdictions

BCTC's OATT and Business Practices contain a number of provisions which either influence or determine how the electricity transmission industry operates in BC.

BCTC argues that these provisions expressly obligate BCTC: (1) to release Firm capacity on its Transmission system to customers on a first-come, first-served basis, where it has ATC, or to construct Network Upgrades to provide LTF PTP transmission service; and (2) to calculate Firm ATC based on prescribed requirements. BCTC also notes that its OATT minimizes its ability to exercise discretion, to accord with FERC's overriding objective of preventing undue discrimination. (BCTC Argument, pp. 3-4)

BCTC testified that the calculation of ATC takes the capacity rights of existing customers into account such that if the system is taken up fully by existing customers, assuming they exercise their rollover rights, no new customer is able to access the transmission system without entering a queue, having a study done, paying for the study and potentially paying for the required upgrades, such that the system is basically a "closed shop" for existing customers in terms of LTF PTP transmission service. (T3: 449-450)

LTF PTP customers also have the continued right to roll over their contracts, assuming this right was granted in the initial service contract. (see Constellation Power Source, discussed later, in Section 4.1.2.2.1)

Existing firm service customers with contract terms of a year or longer currently also have a right of first refusal to continue to take their capacity, provided that they agree to match the contract term offered by a competing request and agree to pay the Commission-approved rate. (Exhibit B2-1, Attachment A, BCTC OATT s. 2.2) BCTC proposes to amend this section to increase the contract term required for the reservation priority to five years, consistent with the FERC Order 890 pro forma tariff amendments. This amendment is approved in the Commission's companion Decision relating to other OATT amendments.

4.1.1.2 Alberta

The Alberta electricity market has a different structure than BC and is operated by the Alberta Energy System Operator ("AESO"). Alberta does not have an Open Access Transmission Tariff. It has no firm path reservation system, either internal or external. (T2: 203) Rather, Alberta has a "pool system" whereby a vendor of electricity must bid into the Alberta pool at zero price at the border and is paid the going price at the time. Alberta determines the import levels that it can accept, based on its own system usage, and posts these numbers in real time and also six months out. (AESO Evidence, T2: 254)

There is also no ability for a potential customer to trigger an upgrade on the Alberta system, although anyone could construct a merchant tie line. (T2: 248, 253)

4.1.1.3 Curtailment Practices

In the event that the Alberta system will not be able to accept all of the energy scheduled to flow into the pool over the BC>AB intertie, in the hour before delivery, AESO will allow BCTC to make the necessary curtailments of its customers' schedules, which BCTC does on a pro rata basis in accordance with the curtailment provisions contained in its OATT, to ensure that the Alberta ATC is not exceeded. If, in the last 20 minutes before the hour, BCTC has not made sufficient curtailments, the AESO will take steps to curtail transmission using its own curtailment model, which is on a "last-in / first-out" basis. (AESO Evidence, T2: 259-260) The AESO determines the order based on its receipt of "E-tags".

As noted above, the firm transmission sold on the BC system was 785 MW in 2008, whereas the maximum Alberta hourly import that year was 625 MW. As a result, scheduled imports into Alberta from BC were curtailed in approximately 26 percent of hours in 2008, 24.5 percent of the hours curtailed were due to Alberta constraints and 1.5 percent due to constraints in BC. (Exhibit B1-17, TCE 2.9.2)

LTF PTP capacity over the BC>AB path is most used in peak hours (from 0800 hrs. to 2200 hrs.) and super-peak hours (from 1600 hrs. to 2200 hrs.) (Exhibit B1-17, TCE 2.9.3)

Table 3 below shows the percentage of transmission curtailments, by period (i.e. peak, super peak and off peak) in 2007 (when the long term firm transmission capacity was 480 MW for 11 months and 605 MW for 1 month) as compared to 2008 (when the capacity was increased to 785 MW for the entire year). Table 3 indicates an approximate ten-fold increase in constraints originating in Alberta in peak and super peak hours in 2008 over 2007.

Table 3

Year		Peak Hours	Super Peak Hours	Off Peak Hours
2007	BC Constraints	2.4%	1.7%	0.7%
	Alberta Constraints	2.8%	3.1%	11.3%
2008	BC Constraints	1.5%	1.2%	1.0%
	Alberta Constraints	29.1%	30.4%	16.3%

(Source: Exhibit B1-17, TCE 2.9.4)

4.1.2 BCTC's OATT

4.1.2.1 Firm Transmission Service

During the course of the hearing, a number of different definitions were suggested to describe the product being purchased and sold, i.e. "firm transmission service". This term is not defined in the OATT.

BCTC defines "firm transmission service" as "the last service to be curtailed when curtailments occur". (T3: 390)

TCE's expert witness, Dr. Craig Roach, defines "firm transmission service" as "the highest priority service" but adds that "[i]n general, firm service is curtailed only for forced outages or scheduled maintenance." (Exhibit B2-16, BCUC 1.1.1) He also suggested that it would be a matter of judgment on the performance level expected for firm service but that firm service would not be routinely curtailed, and a curtailment level of 20 percent or more would catch his attention. (T2: 125)

BCTC disagrees with the second component of Dr. Roach's definition (i.e. curtailment only for forced outages or scheduled maintenance), taking the position that he "is extending the definition of firm service to include a reliability consideration, which in the context of commercial firm service doesn't exist." (T3: 391)

TCE argues that "commercially firm" is not a term that appears either in BCTC's tariff or in any of the relevant FERC Orders" and describes it as a "novel" term. (TCE Argument, p. 11)

In its June 3, 2008 Application to Temporarily Suspend the Release of Firm Available Transfer Capacity on the BC to Alberta Path (Exhibit B2-1 Tab E) BCTC explains that "[c]ustomers purchasing LTF PTP transmission service from BCTC under the OATT are, in effect, purchasing a priority right relative to Non-Firm PTP transmission services. LTF PTP transmission service is "Firm" service in the sense that it has priority over Non-Firm Point-to-Point (NF PTP) transmission service, *and is not subject to curtailments for economic reasons*. LTF PTP transmission service is expressly subject to curtailment for reliability reasons. [OATT Section 13.5] Purchasing LTF PTP transmission service on the BC>AB Path does not guarantee access to transmission service under all conditions, but secures priority to scarce transmission over holders of lower value services" [emphasis added].

NorthPoint notes that the term "firm" as used in s. 13 of BCTC's OATT is not defined precisely either in the OATT or in BCTC's Business Practices. (NorthPoint Argument, para. 2.08) NorthPoint argues that "whatever else may be said about it, the service that it and the other original LTF customers have received since December, 2007 is not true "firm" service, at least as that term is conventionally understood in plain English or even in the technical parlance of the electricity market, as enunciated, for example, by NERC." (NorthPoint Argument, para. 1.11) NorthPoint quotes the Oxford English Dictionary definition of the word "firm" as, "...among other things: securely fixed, not easily moved, stable... fixed, settled, established; immutable; secure; sure...constant, steadfast; unwavering...", and also cites the NERC definition of "Firm Transmission Service" as "[t]he highest quality (priority) service offered to customers under a filed rate schedule *that anticipates no planned interruption*." (NorthPoint Argument, para 2.08, emphasis as per NorthPoint; TCE Reply, p. 10) NorthPoint also notes the definition of "Firm Transmission Service" in

BCTC's Business Practices' glossary is "*Service which cannot be interrupted by British Columbia Transmission Corporation but which is subject to curtailment for specified conditions (e.g., emergencies and equipment outages) [emphasis added].*" (NorthPoint Argument, para. 2.08)

BCTC states that it takes no issue with the inclusion of the phrase "no planned interruption" in the NERC and WECC definitions of "Firm Transmission Service" and agrees that the NERC definition is essentially echoed in BCTC's Business Practices. BCTC does take issue, however, with the idea that the phrase "no planned interruption" implies that its LTF PTP transmission service includes a performance requirement based on the capability and reliability of a neighbouring transmission system as opposed to its own. (BCTC Argument, pp. 42-43)

BCTC also rejects any suggestion that the definition of "Long Term Firm Point-to-Point Transmission Service" in its OATT should be amended to accord with the NERC/WECC definition to the extent that the definitions in the OATT or otherwise used by BCTC are inconsistent. BCTC argues that it is unnecessary to amend the OATT because BCTC already addresses the concept of reliability in its System Impact Studies and its calculation of Firm Total Transfer Capability, the starting point for any calculation of additional transfer capability. BCTC also notes that the definition of "Long-Term Firm Point-to-Point Transmission Service" and the terms and conditions of that service as contained in Part II of its OATT track the language of FERC's pro forma tariff and cites the FERC decision in El Paso Electric Company (84 FERC P 63,008) in support of the proposition that "firm" has different meanings in the reliability context as compared to the commercial context, which are service duration, reservation and curtailment priorities and scheduling restrictions. BCTC further notes the comments of its expert witness, Dr. Ren Orans, who suggested that if BCTC were to "redefine firm, contingent upon availability of import limits in Alberta...there are implications that could ripple through the western interconnect..." which he suggested could result in transmission providers asking the purpose of the request for transmission service prior to providing it. BCTC also argues that changing the definition of LTF PTP service could offend the reciprocity principle under which Powerex is able to access the US electricity markets at market-based rates. (BCTC Argument, pp. 43-45; BCTC Evidence, T3: 418-420)

Commission Panel Discussion

The Commission Panel accepts the credentials of both Dr. Roach and Dr. Orans as expert witnesses qualified to provide opinion evidence in this proceeding.

The Commission Panel accepts the evidence of Dr. Roach and finds that there is a reasonable expectation on the part of purchasers of firm transmission service that that service will generally only be curtailed for outages or scheduled maintenance, in other words, for reliability purposes. This interpretation is consistent with the difference in the descriptions of curtailment provisions for "firm" and "non firm" transmission service in BCTC's current OATT where firm service is contemplated as being curtailed to maintain reliable operation of the system or in the event of an emergency or other unforeseen condition which impairs or degrades the reliability of the system (s. 13.6) and non firm service is contemplated as being curtailed for reliability reasons as well as "interrupted" for economic reasons (s. 14.7). This analysis was also provided by BCTC in its June 3, 2008 application to temporarily suspend the release of ATC on the BC>AB path, as noted above. This interpretation is also consistent with the common language usage of the term "firm" and BCTC's Business Practices Glossary definition of "Firm Transmission Service". It is also consistent with the definition of "curtailment" in the OATT Definitions section which is: "[a] reduction in firm or non-firm transmission service in response to a transmission capacity shortage *as a result of system reliability conditions*". (emphasis added)

The Commission Panel acknowledges BCTC's position that it can only sell transmission capacity on its own system and it is common ground that the capacity constraints on the BC>AB path generally originate from reliability considerations in Alberta. However, regardless of where the constraints originate, in reality the "curtailment" occurs on the BCTC system and the fact is that additional sales of "firm capacity" on BCTC's system have resulted in increased curtailment of the transmission capacity of existing long term firm customers on BCTC's system. At some point, as curtailment increases, irrespective of the definition of "firm" transmission service, even the notion of transmission service itself disappears, firm or otherwise.

The Commission Panel does not, however, see any need to amend the OATT to include any particular definition of the term "firm". The Commission Panel acknowledges BCTC's position that its OATT is consistent with the wording of the FERC pro forma tariff in terms of its definition of Long Term Firm Point-to-Point Transmission service and related terms and conditions. The Commission Panel is of the view that there is ample support for the proposition advanced by Dr. Roach that "firm service" should not be "routinely curtailed", unless for reliability purposes, based on the wording of the tariff as it stands, absent an actual definition. The Commission Panel notes that this interpretation of "firm service" may involve some degree of judgment as to what is an unacceptable level of curtailment or, conversely, an acceptable level of service, as no specific number was advocated by any party, but the Commission Panel is of the view that this challenge is not insurmountable and should not invoke an excessive use of discretion.

In other words, even if one cannot precisely define exactly what firm transmission service is, this does not mean that it cannot be recognized for what it is not. At some point, the product being purchased and sold is not firm transmission service in any realistic sense. The Commission Panel is of the view that no specific number need be associated with the concept of what is an acceptable level of curtailment for firm capacity and that this issue is better reviewed on a case by case basis.

The Commission Panel also notes that, to the extent that the reliability concerns originate in Alberta, BCTC's customers are not actually being "curtailed" by BCTC (given the definition of curtailment to involve reliability considerations), but by AESO, although the curtailment is administered by BCTC pursuant to agreement. However, on the flip side, the fact that BCTC sells the capacity on its system to its customers in the first instance, and by doing so, creates the need for the additional curtailment on its system, (albeit on direction from AESO) is tantamount, in the Panel's view, to BCTC indirectly "interrupting" its customers' ability to transmit, for economic reasons, which is a phenomenon associated only with non firm transmission. This is necessarily the case because it has been clearly established that there is no "sink" on the BC side of the BC > AB Intertie and any party purchasing capacity on the BC > AB path cannot use it unless the energy can actually flow through the BC system and over the Intertie into Alberta. (TransAlta Evidence, T3: 302-303; BCTC Evidence, T3: 346-347; TCE Evidence, T2: 102-103)

The Commission Panel, further, does not agree that the FERC decision in El Paso referred to by BCTC is relevant to the circumstances of this case. The El Paso case involved a transmission provider's attempt to classify its entire transmission capacity as "capacity benefit margin" and therefore offer no firm capacity whatsoever on its system on the basis that the "Eddy County Tie" was a single circuit facility such that it could not meet "N minus 1" criteria for reliability. FERC noted that all parties had conceded that the OATT defined firm transmission service according to service durations, reservation and curtailment priorities, and scheduling restrictions such that any conclusion that "firm" service under the OATT included a guarantee that the loss of any single element in the service provider's system would not cause an interruption did not follow. FERC held that the ability to offer "firm" service in accordance with the tariff was independent of the reliability of the service such that "firm" transmission service was capable of being offered and is required to be offered over any single circuit high voltage direct current ("HVDC") interconnection, so long as the interconnection has the capacity available to provide the service.

FERC went on to explain that because of the physical limitations of single circuit HVDC interconnections, any customer seeking firm transmission service over such interconnection "implicitly acknowledges that the service cannot be provided in accordance with "N minus 1" reliability criteria...and assumes a risk that the service may be interrupted...*in an emergency*". (El Paso Electric Company 84 FERC P 63,008 at pp. 4-5 (emphasis added))

The Commission Panel notes that the risk which FERC placed on customers seeking firm transmission service in El Paso was the risk of curtailment due to reliability issues on the transmission system, a risk made greater due to the Eddy County Tie in the El Paso system not being able to meet "N minus 1" reliability criteria. The risk of curtailment for reliability reasons on the BCTC system is a risk that all parties acknowledge and accept in this case. (See, for example TCE Evidence, T2: 218; NorthPoint Evidence, T3: 269) What is not accepted by TCE and NorthPoint and what is in issue in this case is the increased risk of curtailment due to reliability issues on another system brought about by the sale of additional capacity on the BCTC system.

4.1.2.2 Available Transfer Capability/Available Transmission Capacity

The acronym "ATC" was used throughout the proceeding. Its precise meaning and the words for which it stands tend to vary, depending on the context. As noted below, Attachment C to BCTC's current OATT describes "Available Transmission Capability", and this has been also described as "ATC". Attachment C is proposed to be amended to describe "Available Transfer Capability" or "ATC". "ATC" has also been described as "Available Transmission Capacity" (Exhibit B1-7, BCUC 1.71.1). The term, by definition, assesses the capability of a transmission system to accept new requests, after accounting for, among other items, the capacity taken by existing customers. At times, however, the term has also been used to describe the entire transmission capacity available for sale, based on the Total Transfer Capability of the system minus amounts needed to address reliability considerations, such as the Transmission Reliability Margin ("TRM"). Nothing in particular turns on the words making up the acronym and the Commission Panel has made every effort to minimize its use. However, to the extent that it is used, it is important for the reader to note the context.

NorthPoint argues that BCTC has oversold the LTF transmission rights on the BC to Alberta path due to a "misapprehension" on how ATC should be calculated, in that BCTC has determined that it ought not to consider constraints originating in Alberta in its calculation of ATC. (NorthPoint Argument, para. 3.01)

Attachment C to BCTC's current OATT sets out the methodology to be used by BCTC in assessing Available Transmission Capability.

Attachment C states that:

"[i]n determining the level of transmission capacity that is available to meet new Transmission Service requests, BCTC will exclude from the total transfer capability of the Transmission System that capacity needed to reliably meet:

1. the current and reasonably forecasted load of Network Customers;

2. existing firm Point-To-Point Transmission Services;
3. previously received pending Applications for firm Point-To-Point Transmission Service; and
4. existing contractual obligations under other Tariffs, rate schedules and contracts." (Exhibit B2-1, Tab A, Attachment C)

BCTC states that: "[m]athematically, the Available Transmission Capacity (ATC) is defined as the Total Transfer Capability (TTC) less the Transmission Reliability Margin, less the Capacity Benefit Margin and less the sum of existing transmission commitments (which includes BC Hydro domestic load)...TRM on the BC>AB path is 65 MW and...the Capacity Benefit Margin is always zero." (Exhibit B1-7, BCUC 1.71.1)

4.1.2.2.1 Consideration of Markets in Neighbouring Jurisdictions – FERC Principles

The central issue in this proceeding is whether the capacity of the transmission system in a neighbouring jurisdiction needs to be taken into account by a transmission provider when determining its own capacity available for sale.

At the request of this Commission, BCTC conducted a study of selected systems in North America to determine how other system operators deal with the issue of cross-jurisdictional capacity. BCTC looked at ten different transmission providers in Canada and the U.S. The survey concentrated on jurisdictions where a transmission provider with an OATT (such as BCTC) interfaced with a pool-based system (such as AESO). The results of the study were not conclusive in that there were jurisdictions identified which did consider neighbouring system conditions in determining Total Transfer Capability or Long Term Firm ATC and others which did not. (Exhibit B1-1, pp. 142-148; Evidence of BCTC, T3: 320-321)

BCTC, however, takes the position that FERC decisions dictate that it "is precluded by its OATT from conditioning the release of Firm capacity on its own Transmission System based on whether

there is transmission capacity available on a third party system.” (BCTC Argument, p. 8) BCTC cites three FERC decisions in support of this proposition: Commonwealth Edison Company 96 FERC 61,158 (2001); Exelon Generation Company, LLC v. Southwest Power Pool, Inc. 101 FERC 61,226 and Constellation Power Source, Inc. 102 FERC 61,142.

TransCanada argues that the above decisions are not applicable to the current situation as they deal with FERC’s policy as it relates to the rollover rights of existing customers where transmission capacity has diminished over time. (TCE Reply, p. 42)

BCTC takes the position that the principles are the same in either context. (BCTC Argument, p. 22)

Commission Panel Discussion

The Commission Panel agrees with TCE that each of the FERC decisions upon which BCTC relies for the proposition that it cannot condition the release of Firm capacity on its own system based on whether there is capacity on a third party system deals with the rollover rights of existing customers, not potential new customers, and thus, in the Panel’s view, the decisions provide little guidance for the current situation. The Panel does not agree with BCTC’s assertion that the principle is the same in either context.

For example, in Commonwealth Edison, although FERC stated the applicant was “not authorized by the pro forma tariff or by its own OATT to condition a transmission customer’s right to transmission service on whether there is transmission capacity on a third party’s transmission system”, FERC proceeded to confirm that “[a]ll long-term firm transmission customers have the right to roll over their service...” (p. 4) and that “rollover rights facilitate orderly planning.” (p. 5) The decision was concerned only with roll over rights and, in the Panel’s view, should not be extended beyond that context.

Similarly, in Exelon Generation Company FERC re-iterated that “[a]ll long-term firm transmission customers have the right to roll over their service...” (at para. 19) and further commented on the

right of first refusal enjoyed by existing transmission customers over other potential customers seeking their capacity. FERC explained that by its statement in another case (Idaho Power Rehearing Order, 95 FERC at 61,759) "the right of first refusal provision applies to existing capacity and does not require a transmission provider to build additional capacity in response to a request to rollover a transmission service", it "did not intend... that a transmission provider could deny a customer's rollover request to the extent that the transmission provider did not have sufficient available capacity to meet the request and could only grant the request if it were to build additional capacity. Implicit in this statement was the expectation that the transmission provider had already studied the impacts on its existing system of providing the transmission service and determined that it could provide that service (including any rollover if requested) using its existing system." In other words, "[b]ecause a determination to grant the initial service request carried with it the obligation to assume that the customer would continue to take service, the Commission expected that the transmission provider would have sufficient existing capacity to serve a rollover request and not then need to build additional capacity to serve that rollover request." (p. 8)

Constellation Power Source also dealt with rollover rights, reiterating much of the same language as in the Exelon Generation case discussed above. FERC confirmed that "[r]egardless of the length of the contract term, a transmission provider will grant a request for long-term firm transmission service only if it determines that it has sufficient available transmission capacity to provide the service. In making this determination, the transmission provider is obligated to plan its system to meet all of its firm loads, including any prospective rollovers of the transmission services used to meet those loads." (p. 11) FERC went on to note that, provided it is handled in the initial transmission contract, the transmission provider can limit a prospective customer's rollover rights. The rights of existing long term customers, however, include the right to continue to take service. (p. 8)

The Commission Panel therefore finds that the FERC principles contained in the decisions referred to do not preclude BCTC from considering the capacity of an adjoining jurisdiction when determining its own available transfer capability.

TransCanada, on the other hand, argues that FERC principles require BCTC to consider conditions on neighbouring systems when determining how much LTF PTP transmission service it can make available for sale. (TCE Reply, p. 2) TransCanada refers to comments contained in FERC Orders 890, 890-A, 890-B and 890-C in support.

In FERC Order 890 the Commission confirmed its intention to provide further guidance on the subject of ATC to improve transparency and consistency in its calculation and in the process of data exchange as between transmission providers. (FERC Order 890, pp. 57-58) FERC stated:

“[w]e also require transmission providers to document their processes for coordinating ATC calculations with their neighboring systems. This requirement is particularly important with respect to seams between market and non-market areas, ..., and with respect to the request of other commenters to increase regional coordination regarding ATC calculation. While this Final Rule does not address all seams issues between market and non-market areas, it does take important steps towards that end by improving data exchange between transmission providers and providing increased transparency with respect to ATC calculation.” (FERC Order 890, p. 196)

TransCanada quotes FERC Order 890-A where the Commission clarified “that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface.” (TransCanada Argument, p. 14)

In Order 890-B FERC clarified that “consistent” should be interpreted as “identical”. (TransCanada Argument, p. 15 quoting FERC Order 890-B at para 15)

Then, in Order 890-C FERC backed off its interpretation of “consistent” as “identical” stating:

“[t]he requirement then is, instead, to achieve consistency in such values through the development of ATC calculation methodologies that produce sufficiently accurate, consistent, equivalent, and replicable results. In some instances, it may be possible for transmission providers under these methodologies to achieve identical ATC values on either side of an interface. In others, such as when there are differences in reservation status or when there

are multiple interfaces between the transmission providers, it may not be possible or even practical to achieve identical values." (TransCanada Argument, p. 16 quoting FERC Order 890-C at para. 9)

BCTC takes the position that the FERC authorities cited above "do not demonstrate an implicit tariff obligation on BCTC to condition LTF PTP transmission service on the availability of capacity on the Alberta system" and that there are no explicit OATT provisions requiring it to do so. It suggests that it achieves consistency in ATC values through the WECC Path rating process and that to use Alberta hourly import limits to determine a long term import limit would involve increased discretion, which is contrary to the FERC guidance in Order 890.

Commission Determination

The Commission Panel is of the view that FERC principles do support allowing a transmission provider to consider constraints in adjoining areas when calculating ATC. The distinction as between achieving "consistent" and "identical" ATC values on either side of an interface does not, in the Panel's view, support the proposition that the value on the other side of an interface need not be considered at all in determining ATC for long term firm capacity. Rather, the Commission Panel acknowledges that in real time the ATC values must necessarily be identical, (see, for example evidence of BCTC T3: 342) for reliability purposes, but is of the view that consistency is a sufficient goal for the longer term. In the event that the Commission Panel is found to be incorrect, and it is determined that FERC principles are inconsistent with such an approach, the Panel is still of the view that, in the particular circumstances of this case, in this jurisdiction, it is incumbent upon BCTC to take the constraints on the Alberta system into account when determining long term firm ATC on its system. As noted above, BCTC must consider and abide by the import limits into Alberta in real time. The Commission Panel accepts the evidence of Dr. Roach that short term reality should be reflected in long term calculations, rather than ignored.

4.1.2.2.2 BCTC's System

BCTC also argues that it only sells transmission capacity on its own system within British Columbia, to the knowledge of all parties. Its tariff specifically denotes a point of receipt ("POR") and point of delivery ("POD") within the provincial boundaries. It therefore concludes that it need not consider conditions in Alberta, and further states that it has never done so in the past. TCE agrees that BCTC provides transmission service only on its own system but argues that the determination of how much long-term point-to-point transmission service BCTC can sell is "not an academic exercise that is carried out without regard to real world conditions" and that the value of long term firm point-to-point transmission service to customers lies in actually being able to use the service they purchase to physically flow power (in this case, for the most part, from Washington into Alberta). (TCE Reply Argument, p. 9)

Commission Panel Discussion

It is clear from the evidence that, notwithstanding the POD within British Columbia, in reality, there is no destination for the energy within B.C. and that any energy which flows must be able to go into Alberta or it cannot flow at all. (TransAlta Evidence, T3: 302-303; BCTC Evidence, T3: 346-347; TCE Evidence, T2: 102-103) The Commission Panel accepts that BCTC may never have taken conditions in Alberta into account when determining the transmission capacity available for sale in British Columbia in the past, but the evidence indicates that conditions in Alberta did not become a particularly limiting factor until January of 2008, when BCTC increased the long term firm capacity available for sale to 785 MW. The Commission Panel is also of the view that BCTC did actually "consider" conditions in Alberta in its 2007 System Impact Studies, albeit by way of making an assumption that Alberta could accept all the energy which BCTC could transmit to the border. This assumption was false, to the knowledge of BCTC.

4.2 Did BCTC violate its OATT?

In determining whether to allow the TransCanada Complaint, the Commission Panel must determine whether BCTC, in fact, breached the provisions of its OATT.

BCTC takes the position that it has acted at all times in accordance with its OATT and that the TCE complaint must therefore be dismissed. (BCTC Argument, p. 2)

As noted above, it is BCTC's position that it "has consistently and transparently applied its OATT and published Business Practices in calculating and releasing Firm capacity on the BC>AB Path" and that these provisions "expressly obligate BCTC: (1) to release Firm capacity on its Transmission System to customers on a first-come, first-served basis or to construct Network Upgrades to provide LTF PTP transmission service; and (2) to calculate Firm ATC based on prescribed requirements." (BCTC Argument, p. 3) BCTC also submits that "[t]here is no express provision of the OATT that would have authorized BCTC to withhold Firm transmission capacity on BCTC's Transmission System". (BCTC Argument, pp. 3-4)

BCTC testified that, at the end of 2007, when it made the decision to sell increased incremental long term firm capacity up to 785 megawatts, it knew that its existing long term firm customers would experience increased curtailment. (T3: 377) It also testified it did not feel any need to inform its existing customers (of which there were 3) of the risk. (T3: 378, 449) BCTC further testified it did not consider seeking guidance from the BCUC prior to selling the incremental capacity as it believed that it was acting "wholly in accordance with [its] tariff" and that it "was and is the right thing to do". (T3: 378) It also testified that the consequences to existing customers in terms of additional curtailments were "not something that's of concern to BCTC in terms of what those impacts or implications are." (T3: 379)

Commission Panel Determination

The Commission Panel notes the OATT itself does not specifically define "firm transmission capacity" (as discussed above) and that Attachment C sets out what is basically an arithmetic calculation of Available Transmission Capacity (Available Transfer Capability) which BCTC has followed. No party was able to point to any specific provision in the OATT which requires BCTC to consider constraints in a neighbouring jurisdiction when calculating its long term firm point-to-point transmission capacity available for sale. Therefore, although this approach may have been open to BCTC on the basis of the FERC principles as set out in FERC Orders 890, 890-A, 890-B and 890-C it was not necessarily required by BCTC's OATT. Accordingly, the Commission Panel finds that BCTC was in technical compliance with its tariff when it offered 785 MW of transmission capacity for sale. It follows that the TransCanada complaint must be dismissed.

However, the Commission Panel is of the view that, while BCTC's actions were arguably consistent with the letter of its OATT, and with its interpretation of its OATT, as well as with certain FERC guidelines, there are a number of negative consequences flowing from BCTC's decisions which do not, in the Panel's view, accord with the spirit of the FERC guidelines, in terms of open access to transmission, transparency, and the rights of existing customers over potential new customers as outlined in the decisions relating to rollover rights referred to above. As noted, the Commission Panel is of the view that the situation on the BC>AB path is not comparable to any of the FERC cases referred to by BCTC. The BC > AB path is a single destination path. If Alberta cannot accept the energy, customers have no interest in using or ability to use the BCTC transmission capacity. The sale of additional LTF PTP capacity on the BC>AB path only serves to further degrade the service of existing customers.

The Commission Panel finds the fact that a transmission customer may need to purchase more capacity than it requires to ensure that it can flow the amount of energy it contracted to flow (as is the case with NorthPoint) means that the effective price of transmission is above the stated price and not transparent. BCTC also confirmed that it does not reduce the charges to its customers when their capacity is curtailed if the curtailment is the result of a problem on another system, i.e.

Alberta, so the customer is paying the full charge for reduced transmission. (Evidence of BCTC, T3: 398) Similarly, both Trans Canada and NorthPoint gave evidence that they often do not schedule the full amount of power that they could sell for transmission because they know that their transmission capacity will be curtailed and to schedule the full amount of capacity which they purchased would result in their basically having to rescind portions of their contracts with their energy suppliers. (NorthPoint Evidence, T3: 274, 286; TCE Evidence, T2: 224-225)

Further, the evidence suggests that other parties may be forming a queue which bears no resemblance to the amount of energy they could reasonably contract to transmit, in order to prompt a system upgrade. For example, TransAlta testified that it has 12 reservations in the queue, each for 100 MW, but its witness was unable to advise as to the magnitude of the annual cost should it be granted the capacity sought, other than to acknowledge that it would be "a large number". (T3: 308-309) To paraphrase a Powerex submission (albeit made in another proceeding in a different context) as noted by FERC, the queue becomes clogged with duplicative requests which reflect customers' attempts to secure service, rather than the actual quantity of service needed. (FERC Order 890, p. 24)

Similar concerns were also raised by Powerex in November and December of 2007 when BCTC made the decision to increase the long term firm capacity available for sale on the BC>AB path. Powerex noted in an e-mail to BCTC:

"BCTC is selling as [sic] additional 305 MW firm over what they have done historically. In the study BCTC has stated that they assume the adjacent control areas can accommodate these increases. I am not suggesting that BCTC is prohibited from making that assumption but I would like to make sure that you fully understand the consequences of this change.... Once BCTC coordinates TTC with AESO all of the new 305 MW will be cut on average. The way this happens is via pro-rata reduction. So if you use 560 MW as the average number then somebody like TCPC who owns 100 MW will only receive $100 \text{ mw} \times (495/785)$ or 63 MW on average of their transmission but still have to pay for all 100 MW. This will leave both existing and new customers quite unhappy from a change that doesn't create any new space. Basically existing customers get less transmission and pay the same and new customers get less MWs then [sic] they

thought they were going to get but pay for the full amount.” (Exhibit B1-27, e-mail #8)

In its response to Powerex, BCTC reiterated the position it takes in this Complaint, that it is not authorized under the OATT to condition a transmission customer's right to transmission service on whether there is transmission service capacity on a third party, citing the same cases noted above which the Commission Panel has found relate to rollover rights. (Exhibit B1-27, e-mail #11)

In the Commission Panel's view, none of these results accords with FERC principles. Pricing of transmission becomes non-transparent and the queue is unlikely to represent an accurate estimate of demand. The sale of additional capacity to new customers at the expense of the degradation of the transmission capacity of existing customers is, in the Panel's view, an example of undue discrimination in these circumstances.

In Order 890-B FERC discussed its decision to lift the price cap in the secondary market for transmission service for a trial period to “foster the development of a more robust secondary market for transmission capacity.” It confirmed the positive obligation on transmission providers to offer all available capacity to customers on a non-discriminatory basis and to expand their systems as necessary to accommodate additional requests for service. FERC also stated that “[t]ransmission providers must continue to make primary capacity available at the rates specified in their individual OATTs. Customers that do not wish to participate in the secondary market may continue to take service from the transmission provider directly, just as if the price cap had not been lifted. For those customers participating in the secondary market, however, lifting the price cap will create additional incentives for others to make service available, increasing the ability to obtain transmission capacity.” (FERC Order 890-B, pp. 45-47)

The existence of a secondary market and the comments of FERC that the transmission provider is to make primary capacity available at the rate specified in its OATT reinforces the Commission Panel's view that the increased curtailment of existing customers resulting from the sale of

additional long term firm capacity without a reduction in the price represents an effective increase in the tariff for primary capacity which is not transparent.

The Commission Panel accepts that BCTC should attempt to maximize its revenues and the utilization of the transmission system but notes that selling additional LTF PTP service which simply results in curtailment of existing customers is not increasing the use of the system. The Commission Panel agrees with TCE's argument (at p. 45) that FERC requirements relating to making all available transmission capacity available to customers on a non-discriminatory basis do not require that such capacity necessarily be sold as firm capacity.

As the Panel finds that BCTC was in technical compliance with its OATT, it follows that the OATT needs to be amended to address the negative consequences noted and to provide full transparency.

4.3 What is a Reasonable Figure for Transmission Capacity for Sale?

As noted above, one of the issues which require consideration and determination by the Commission Panel is the amount of transmission capacity which BCTC should offer for sale. In Part 6 of its OATT Amendment Application, which deals with Firm Transmission Sales to Alberta and the TransCanada Complaint, BCTC proposes to amend Attachment C to its tariff, which deals with the methodology for calculating Available Transmission Capacity/Available Transfer Capability, by adding the following sentence:

"Notwithstanding any other provision in this Tariff, the transmission provider shall limit sales of Firm Point-to-Point Transmission Service on the BC>AB path to 785 MW.",

the current limit, "to address the unique circumstances faced on the BC>AB path" and to improve transparency. (Exhibit B1-1, p. 148)

As also noted above, other parties argue for different limits, as set out below.

4.3.1 WECC Path Rating 1200 MW

TransAlta argues that BCTC should upgrade its transmission system, which involves an estimated cost in the order of \$36 million to \$54 million, to increase the transmission capacity available for sale to the WECC path rating of 1200 MW (1160 MW Operating Transfer Capability). It is common ground that such an upgrade would not serve to solve any problems on the Alberta side, such that all existing customers would experience further curtailments. TransAlta would be required to pay the cost of the upgrade.

TransAlta takes the position that this option is preferable as it is consistent with FERC principles regarding consistency in ATC calculations, it does not involve withholding of available transmission capacity and/or giving preferential treatment to existing customers and therefore supports reciprocity. (TransAlta Argument, paras. 4-6) TransAlta recognizes the “seams issue” with Alberta but suggests that this does not provide justification to withhold available ATC in British Columbia to the benefit of existing transmission customers, which include BCTC’s affiliates, and that such withholding is “clearly contrary to FERC requirements”. (TransAlta Argument, paras. 13-14) TransAlta also argues that, if ATC were based on the Alberta system limitations, BCTC would be required to exercise discretion to determine when and if it should approach its regulator to seek to increase its sales of long term firm transmission capacity. (TransAlta Argument, paras. 20-22) TransAlta further suggests that any approach which limits ATC on BC’s system based on capacity on an adjacent system could create problems on the BC-US seam due to precedent, and finally, that reciprocity requires that “comparable” services be offered in non-FERC jurisdictions, and that limiting firm transmission service to the existing level and offering a lower priority service to new customers than that given to existing customers, as suggested by BCTC, would offend this notion. (TransAlta Argument, paras. 24-29)

The Joint Industry Electricity Steering Committee (“JIESC”) argues in favour of the sale of all available capacity on the BC system without consideration of Alberta’s ability to accept the power as being in the interest of ratepayers, making economic sense and being in the public interest while

sending the right signals to Alberta. The JIESC argues that there is strong demand for capacity for transmission within BC. (JIESC Argument, p. 2)

TCE takes the position in response to TransAlta that no additional capacity is properly available in BC and that selling additional capacity that is not properly available to the detriment of existing customers is unreasonable, unfair and unreasonably discriminatory and gives preferential treatment to new customers, who gain financially by having access to capacity that should not have been made available to them in the first place. (TCE Reply, pp. 25-26)

Commission Panel Discussion

It is clear that the North American electrical energy industry is a first come, first served industry where existing customers have priority over potential new customers. There is no suggestion in any of the evidence that FERC principles or the pro forma tariff consider that existing customers are to have their transmission service curtailed, interrupted or otherwise degraded in order to accommodate potential new customers. Rather, potential new customers may be able to take transmission capacity given up by an existing customer, or may be able to trigger an upgrade to the transmission system, for which they must pay.

This, in the Commission Panel's opinion, answers TransAlta's claim that it will be subject to undue discrimination if BCTC does not increase its transmission capacity to the full WECC path rating. Clearly, in this industry, existing customers are entitled to what may amount to "preferential treatment" over potential new customers – this may be discriminatory in a sense, but, in the Panel's view, does not amount to *undue* discrimination within the meaning of FERC principles, or in this jurisdiction.

The Commission Panel disagrees with the JIESC. The Commission Panel accepts the evidence of NorthPoint that having transmission to the border is of no value to a customer if the energy cannot flow across the border. (NorthPoint Evidence, T3: 287) The Commission Panel finds as a fact that there is no actual demand for point-to-point transmission service strictly within BC on the BC > AB

path and that the power must be able to flow over the intertie into Alberta for the transmission service to be useful or valuable in any practical, realistic sense. The Commission Panel also notes that, notwithstanding the formal contract documents which denote a POD and POR within BC, the transmission capacity is marketed by BCTC for "wheeling to Alberta" and, as noted above, is purchased solely for that purpose. (See, for example, BCTC's November, 2007 System Impact Study—Exhibit B1-11, Attachment 3 at p. 6)

The Commission Panel is also not persuaded that limiting the sale of transmission capacity in BC on the BC>AB path until such time as Alberta is in a position to accept increased energy imports will result in excessive discretion on the part of BCTC. AESO publishes its energy import limits on its website in real time and on a forecast basis up to six months out. (AESO Evidence, T2: 254; Exhibit B2-7, BCTC 1.16.0) TransAlta is therefore in a position to monitor the situation on the intertie to the extent that it sees fit. Further, BCTC increases its revenues by selling transmission capacity. In this case, it is accused of overselling. BCTC has no incentive to withhold available capacity to benefit the more expensive generation of its affiliate, to the detriment of electricity customers in the US, the wrong which FERC is seeking to right. In the Commission Panel's view, the capacity is not properly "available" if the energy cannot flow to its intended destination. Nor is the Commission Panel concerned that there is any risk of a negative precedent given that, in the Panel's view, the unique circumstances of this case, which involve a single destination for the energy transmitted, support the restriction of transmission capacity. The Commission Panel does not agree that limiting the transmission capacity to what can reasonably flow will result in transmission service which is not comparable to that in the US under the jurisdiction of FERC.

4.3.2 Current 785 MW

BCTC argues that limiting Firm sales to the current level of 785 MW represents a "principled and practical solution to the problem presented by the current system conditions in Alberta". (BCTC Argument, p. 6) BCTC states that this approach has a "principled outcome because it preserves the existing level of Firm transmission capacity that has been identified through BCTC's System Impact Studies undertaken consistently with the existing OATT. It also honours all Transmission Service

Agreements entered by customers in good faith based on the existing terms of service.” (BCTC Argument, p. 64) BC Hydro/Powerex support BCTC’s “compromise position”. (BC Hydro/Powerex Argument, p. 2)

Commission Panel Discussion

BCTC’s argument supporting the use of a level of Firm transmission capacity which was identified through its most recent System Impact Studies, presupposes that the System Impact Studies were properly undertaken in the first place. This premise, in the Commission Panel’s view, is suspect. BCTC testified that, at the end of 2007, when it made the decision to sell increased incremental long term firm capacity up to 785 megawatts, it knew that its existing long term firm customers would experience increased curtailment (T3: 377) and that that was “not something that’s of concern to BCTC in terms of what those impacts or implications are.” (T3: 379) The Commission Panel notes that the assumption in the 2007 studies that Alberta was capable of accepting all the energy which BCTC could transmit was false, to the knowledge of BCTC. Further, the Commission Panel finds that the increase in the sale of long term firm transmission capacity to this level has resulted in significant curtailment to the transmission service of existing customers and, in fact, triggered the TCE Complaint.

4.3.3 Earlier 480 MW

TCE and NorthPoint argue that the appropriate limit for LTF PTP transmission service on the BC>AB path is the previously-determined 480 MW. TCE submits this level “is appropriate, as it is the last level of long-term firm point-to-point transmission service determined by BCTC that was consistent with the amount of power that could actually flow over the Intertie on a firm basis.” TCE further submits that BCTC’s 2004 determination of 480 MW “was effectively correct, even though BCTC indicates it was calculated without regard to Alberta conditions.” (TCE Reply, p. 7)

Commission Panel Discussion

As noted earlier in this Decision, the sale of additional Long Term Firm Point-to-Point transmission capacity on the BC>AB path to 785 MW was expected to and did result in significant curtailment to the usable transmission capacity of BCTC's existing customers. The earlier limit of 480 MW (545 MW TTC less 65 MW TRM) which was in effect from August 01, 2004 until December 01, 2007 was, according to a 2004 BCTC Bulletin actually available 93 percent of the time from 1999 to 2004. The increase to 785 MW was also only able to be accomplished theoretically through the use of an open loop configuration for the 138 kV ties, at the expense of some amount (albeit small) of reliability to certain areas in eastern British Columbia.

4.4 Remedy

As mentioned earlier, all parties are agreed that BCUC has jurisdiction to amend the OATT. BC Hydro/Powerex take the position that BCTC's OATT is filed as a "rate" pursuant to s. 61 of the Utilities Commission Act RSBC 1996, c. 473 as that is the only lawful basis upon which BCTC can charge for transmission service, pursuant to s. 61(3), and that it is that section which affords the Commission the jurisdiction to amend the OATT. TransCanada argues that a number of other sections serve to provide jurisdiction. The Commission Panel agrees it has the jurisdiction to amend the OATT under s.61 but does not agree that this section provides the jurisdiction exclusively. The Commission Panel does not consider it necessary to make a finding on which particular sections do and do not provide jurisdiction, given that it is common ground that the jurisdiction exists.

In its Complaint, TCE indicated that it was not seeking compensation, but argued for a retroactive adjustment to the Firm transmission capacity available for sale to 480 MW until conditions in Alberta change. TCE asked the Commission Panel to annul or set aside the LTF PTP service agreements entered into in December, 2007 and January, 2008 or alternatively, convert them to a different form of service. (TCE Argument, p. 3; TCE Reply, p. 4)

As noted above, the Commission Panel has determined that BCTC complied with the letter of its existing OATT and dismissed the Complaint. TCE acknowledges, however, that “[t]o the extent that BCTC has followed the provisions of its tariff, those provisions must be amended ... to bring them into compliance with FERC principles.” (TCE Reply, p. 2)

It is clear from its argument that TCE supports a reduction in Firm transmission capacity on the BC>AB path to 480 MW. TCE argues that such a result would not be unfair to customers who purchased capacity after December 1, 2007 as they purchased capacity which was not properly available for sale, at the expense of existing customers.

NorthPoint also argues for a reduction in the Firm capacity for sale on the BC>AB path to 480 MW, but does so on a “going forward” basis. NorthPoint submits that as “no new LTF capacity will actually be available until the requisite upgrades in Alberta are completed, ...there is no real justification for prolonging or exacerbating the hardship already borne by the original LTF customers, which would be the inevitable result of maintaining the status quo or, worse, releasing even more non-existing LTF service to the market.” NorthPoint suggests that all capacity awarded over 480 MW should be treated as “Conditional Firm Service” and any further capacity above 785 MW be offered on a basis akin to non firm. (NorthPoint Argument, p. 11)

BCTC argues that “[i]f the concerns expressed by TCE and NorthPoint are to be addressed, they must be addressed prospectively.” (BCTC Argument, p. 61) BCTC argues that “[r]educing the Firm TTC on BCTC’s Transmission System below 785 MW [sic]...is not appropriate” and considers that the “...result of that approach would be unfair and discriminatory to customers whose confirmed contracts for LTF PTP transmission service would have to be annulled or modified.” (BCTC Argument, p. 62)

The JIESC argues that giving effect to the TCE complaint (i.e. reducing capacity to 480 MW would be unfair to subsequent purchasers who relied upon the existing tariff. (JIESC Argument, p. 3) BC Hydro/Powerex also argue that the parties who received the incremental capacity (following the increase in capacity for sale from 480 MW to 785 MW) would bear all the burden of the reduction

when pre-existing holders would bear none, which would be "manifestly unfair" when all the capacity holders are "equally blameless" and "equally worthy of the transmission capacity rights." (BC Hydro/Powerex Argument, p. 4)

Commission Determination

The Commission Panel determines, on the basis of the totality of the evidence presented, that a reasonable limit for long term firm point-to-point transmission capacity on the BC>AB path at this time is the previously-determined 480 MW. This amount is consistent with the last amount determined by BCTC's engineers (in 2004) to be the appropriate amount prior to the increase to 785 MW in issue. BCTC has admitted that the recent increase in issue was accomplished by using an open loop configuration for the two 138 kV ties and that that configuration did result in reduced reliability to certain areas in Eastern British Columbia. The 480 MW number, although arguably too high, is acceptable to both TransCanada and to NorthPoint, two parties who have had their existing firm transmission service curtailed.

The Commission Panel determines that 480 MW will be the limit on a prospective basis until such time as AESO is able to accept additional energy from British Columbia. To accomplish this, it is suggested that a sufficient number of contracts which contain the subject condition concerning "a further order of the British Columbia Utilities Commission", (which total 350 MW), be cancelled and/or changed to a form of conditional period - conditional firm or non-firm service, up to 305 MW, which is the reduction required to bring the total MW of firm transmission service available for sale back to 480 MW. The Commission Panel is of the view that this is not an unfair result in the particular circumstances of this case, as the affected parties, of which there are two, (namely NorthPoint and BC Hydro) not only already have conditional contracts in respect of the additional 350 MW of capacity and so have not been misled in terms of this result, but are also pre-existing customers who continue to have earlier, unencumbered contracts in place and thus they will also benefit from the reduction in curtailment of those contracts.

The Commission Panel will leave it up to BCTC and its affected customers to determine how the 305 MW capacity reduction is to be allocated to those customers with conditional contracts.

The customers whose conditional long term firm contracts are affected shall have the right to be placed at the top of the existing queue in an order so as to maintain the pre-existing priorities.

BCTC has confirmed that it will continue to co-ordinate with AESO at both planning and operational levels to increase the imports into Alberta over time. (Exhibit B1-1, p. 120) BCTC has also suggested that it will continue to monitor the situation in Alberta and evaluate whether it makes sense to increase the sale of transmission capacity on the BC>AB path and will report to the Commission on any material changes in the interim. (BCTC Evidence, T3: 334) The Commission Panel supports this plan. **The Commission Panel directs BCTC to continue the temporary suspension of the facilities study on the BC>AB path in the interim.**

BCTC is directed to amend Attachment C to its OATT to include the following:

"Notwithstanding any other provision in this tariff, the Transmission Provider shall limit sales of Firm Point-to-Point Transmission Service on the BC>AB path to 480 MW."

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of September 2009.

Original signed by:

ALISON A. RHODES
PANEL CHAIR/COMMISSIONER

Original signed by:

LIISA A. O'HARA
COMMISSIONER

Original signed by:

PETER E. VIVIAN
COMMISSIONER

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BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-103-09

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by the British Columbia Transmission Corporation
to Amend the BCTC Open Access Transmission Tariff

and

A Complaint by TransCanada Energy Ltd.
Re BCTC Firm Transmission Sales to Alberta

BEFORE: A.A. Rhodes, Panel Chair
L.A. O'Hara, Commissioner
P.E. Vivian, Commissioner

September 10, 2009

O R D E R

WHEREAS:

- A. On June 3, 2008, the British Columbia Transmission Corporation ("BCTC") applied to the British Columbia Utilities Commission ("BCUC", "the Commission") to suspend the release for sale of additional Firm Available Transfer Capacity ("Firm ATC") on the British Columbia to Alberta path (the "BC>AB Path") and to suspend the Facilities Study relating to requests for additional service on the BC>AB Path; and
- B. On July 3, 2008, the Commission issued Order G-110-08 (the "Suspension Order"), granting BCTC's June 3, 2008 application. In granting the Suspension Order, the Commission directed BCTC to address certain issues raised in that application in the context of BCTC's next Open Access Transmission Tariff ("OATT") Application or Rate Design review, and to provide a Tariff provision to address the issues; and
- C. The OATT includes the rates, terms, and conditions (including tariff supplements) of the non-discriminatory, open access transmission service offered by BCTC. OATT is modeled on a pro forma tariff established by Federal Energy Regulatory Commission ("FERC") Order No. 888 (the pro forma tariff), which was recently amended by FERC Order No. 890; and
- D. On July 14, 2008, BCTC held a consultation session concerning the implementation of FERC Order No. 890. The consultation included discussion of: the potential impact of incremental sales of firm transmission on existing firm transmission service on the BC>AB Path, the simultaneous submission window, and performance metrics and operational penalties; and
- E. On October 9, 2008, TransCanada Energy Ltd. ("TCE") filed a complaint (the "Complaint") with the Commission with respect to BCTC's decision to release additional Long-Term Firm Point to Point transmission capacity for sale on the BC>AB Path in December of 2007; and

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- F. By letter dated October 17, 2008, the Commission requested comment from BCTC on its views on a process to review the Complaint; and
- G. By letter of October 31, 2008, BCTC responded to the Commission, stating that BCTC anticipated filing its OATT amendment application by November 21, 2008, and that the application would address the issues raised by TCE; and
- H. On November 13, 2008, the Commission issued Letter L-53-08, advising TCE that the Commission would, after receipt of the OATT amendment application, issue a procedural letter or order to solicit submissions on the appropriate process or processes for reviewing the Complaint and the application, including the appropriate degree of separation between the reviews of each; and
- I. On November 21, 2008, BCTC filed its application to amend the OATT (the "OATT Amendment Application"), pursuant to subsections 58, 59, and 60 of the Utilities Commission Act ("UCA", the "Act"); and
- J. BCTC indicated that the OATT Amendment Application included its response to the Complaint; and
- K. As part of the OATT Amendment Application, BCTC sought an interim order, pursuant to section 89 of the Act, and section 15 of the Administrative Tribunals Act, requiring that specified new Service Agreements indicate that they are subject to a further Commission order on the OATT Amendment Application. The requirement would apply to transmission service rollover requests by British Columbia Hydro and Power Authority ("BC Hydro") on the BC>AB Path and any queued requests for Firm ATC coming available on the BC>AB Path on January 1, 2009; and
- L. Commission Order G-175-08, dated November 27, 2008, required BCTC to indicate on two specified BC Hydro rollovers, and any contracts for Firm Available Transfer Capacity coming available on the BC>AB Path on January 1, 2009, that:

"This Service Agreement is subject to a further order of British Columbia Utilities Commission in the matter of the British Columbia Transmission Corporation Application to Amend the Open Access Transmission Tariff"; and
- M. By Order G-195-08, the Commission established a Procedural Conference for January 8, 2009 to address procedural matters; and
- N. At the Procedural Conference, the Commission Panel heard submissions on the scope of the regulatory review, the review format for the principal issues, and whether the OATT Amendment Application and the Complaint could be properly dealt with in a combined proceeding or if separate proceedings were required; and
- O. Following the Procedural Conference, the Commission issued Order G-3-09 whereby it ordered that BCTC's OATT Amendment Application, other than the parts of Part 6 thereof dealing with TCE's Complaint, would be reviewed through a Written Hearing Process, to be termed the "OATT Amendment Hearing"; the Complaint and those parts of Part 6 of the OATT Amendment Application in response, would be reviewed through an Oral Hearing Process termed the "TCE Complaint Hearing"; there would be a common evidentiary record for both the OATT Amendment Application and the Complaint; and established a Regulatory Timetable; and
- P. The TCE Complaint Hearing Proceeded for two days commencing April 29, 2009; and
- Q. The Commission Panel has now considered the evidence and the written submissions of BCTC and TCE and Registered Intervenor for both the OATT Amendment Application and the Complaint.

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
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NOW THEREFORE the Commission, for the reasons stated in its Decision on the TCE Complaint Hearing, orders as follows:

1. The TCE Complaint is dismissed.
2. Long Term Firm Point-to-Point Transmission Capacity for sale on the BC>AB path shall be limited to 480 MW (545 MW Total Transfer Capability less 65 MW Transmission Reliability Margin) on a prospective basis until such time as the Alberta Electric System Operator is able to accept additional energy flowing from British Columbia.
3. Contracts for Firm Service on the BC>AB path bearing the subject condition concerning a further order of the British Columbia Utilities Commission, up to the 305 MW necessary to reduce the capacity offered for sale to 480 MW, shall be cancelled or amended to a form of conditional period-conditional firm or non-firm service. BCTC and its affected customers may determine the allocation of the 305 MW to be removed. Affected customers shall have the right to be placed at the top of the existing queue in an order which is consistent with their pre-existing priority rights.
4. The temporary suspension of the Facilities Study for the BC>AB path granted in Order G-110-08 is continued.
5. BCTC is directed to amend Attachment C to its OATT to include the following clause:

"Notwithstanding any other provision in this tariff, the Transmission Provider shall limit sales of Firm Point-to-Point Transmission Service on the BC>AB path to 480 MW."

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of September 2009.

BY ORDER

Original signed by:

Alison A. Rhodes
Panel Chair/Commissioner

British Columbia Transmission Corporation
An Application to Amend the BCTC Open Access Transmission Tariff
and

A Complaint by TransCanada Energy Ltd.
Re Service Agreement between TCE and BCTC
for Long Term Firm Point-to-Point Transmission Service

Procedural Background and Context

The British Columbia Transmission Corporation ("BCTC") is charged with operating, managing, planning, and maintaining the transmission system in British Columbia which is owned by British Columbia Hydro and Power Authority ("BC Hydro").

BCTC offers wholesale transmission service to its customers, including BC Hydro and its sister company, Powerex Corporation, by means of a standard form Open Access Transmission Tariff ("OATT"), which is modelled after the Federal Energy Regulatory Commission's pro forma tariff in the U.S.

On February 16, 2007 the Federal Energy Regulatory Commission ("FERC") issued Order 890 amending the pro forma tariff.

In late 2007, BCTC made the decision to increase the amount of long term firm capacity it had available for sale on the British Columbia to Alberta transmission path ("BC>AB path") by 305 MW. This decision was fully implemented by January, 2008. The increase in transmission capacity sold to new customers resulted in other existing customers having their service curtailed, due to constraints originating in Alberta.

One of these customers was TransCanada Energy Ltd ("TCE" or "TransCanada"). TransCanada objected to the sale of the increased capacity.

On June 3, 2008, BCTC applied to the British Columbia Utilities Commission ("BCUC" or "Commission") for an Order allowing it to suspend the release of any further capacity on the BC>AB path and to suspend a Facilities Study relating to requests for additional capacity on the path, pending further discussion with its existing and potential customers on whether BCTC should further increase the transmission capacity for sale on the path. BCTC proposed to address this issue in the context of its next tariff update application, in the fall of 2008.

BCUC issued Order G-110-08 dated July 3, 2008 approving the temporary suspension of the sale of additional capacity on the BC>AB path as well as the Facilities Study related to that capacity. BCUC also directed BCTC to submit a report on stakeholder submissions concerning the sale of additional capacity on the BC>AB path and a new product, Conditional Firm Service, including BCTC's commentary in response, from its OATT consultation session which was scheduled for July 14, 2008, by August 8, 2008.

On August 8, 2008, BCTC submitted its Report on Firm Sales to Alberta and Conditional Firm Service.

TransCanada filed a formal Complaint ("Complaint") with the BCUC on October 9, 2008 requesting the Commission to prioritize its firm transmission capacity on the BC>AB path, retroactive to December 01, 2007, pending upgrades to the system in Alberta to accommodate all users.

By letter dated October 31, 2008 BCTC advised that it intended to file its next OATT update application by November 21, 2008 and submitted that, as that application would address issues on the BC>AB path, the application should be considered its response to the TCE Complaint and that the two matters should be heard at the same time. BCTC also requested a joint procedural conference, following the filing of its application.

By letter dated November 06, 2008 TransCanada argued that its Complaint should be heard separately as the Complaint sought retroactive relief which, in its view, would not be fully addressed as part of BCTC's forward-looking tariff update application.

By letter L-53-08 dated November 13, 2008, the Commission advised that it would defer its decision on the appropriate process to be used for determining the TransCanada Complaint until it had received BCTC's tariff update application.

BCTC filed its tariff update application, the OATT Amendment Application ("the Application"), on November 21, 2008. BCTC advised that Part 6 of the Application addressed issues relating to the sale of firm transmission capacity on the BC>AB path and represented its response to the Complaint.

As part of the Application, BCTC also sought a further interim Order allowing it to indicate on any new Service Agreements arising from the rollover/expiry of certain BC Hydro Service Agreements on the BC>AB path on December 31, 2008 that:

"This Service Agreement is subject to a further order of the British Columbia Utilities Commission in the matter of the 'British Columbia Transmission Corporation Application to Amend the Open Access Transmission Tariff' filed on 21 November 2008."

by December 11, 2008, to allow it sufficient time to process the Service Agreement prior to January 01, 2009. BCTC's stated rationale was:

"[t]he interim order sought will permit BCTC to proceed in the ordinary course with processing the 50 MW and 120 MW rollover requests, allow the Commission to consider the above issues in the context of the Application and require BCTC to highlight on the rolled-over Service Agreements and any new Service Agreements on the BC>AB Path that the Commission may make further orders with respect to the Service Agreements as part of its final disposition of this Application. BCTC...believes that the order requested will assist in making the potential for that outcome as transparent as possible."

By Order G-175-08 dated November 27, 2008, the Commission approved BCTC's request to include the condition relating to a possible further order of the Commission following its consideration of the Application on new Service Agreements for the BC>AB path commencing January, 01, 2009.

By letter dated November 28, 2008, TransCanada re-iterated its position that its Complaint should be heard separately, and objected to the proposed sale of any capacity arising from the expiration of a BC Hydro Service Agreement with no rollover rights on December 31, 2008. TransCanada argued that such sale would perpetuate the very situation on the BC>AB path about which it complained. TransCanada asked that the Commission deny BCTC's request for the interim order relating to the sale of the BC Hydro capacity and that any further sales or rollovers of Service Agreements initially executed after December 01, 2007 be suspended pending a resolution of the issues raised in its Complaint.

On December 17, 2008, by Order G-195-08, the Commission established a preliminary Regulatory Timetable, which included a Procedural Conference scheduled for January 8, 2009 to consider issues including: the identification of issues arising from or related to the OATT Amendment Application, the appropriate process for the Commission's review of the TransCanada Complaint, the timetable for Information Requests and Responses and Intervenor evidence and any additional process steps and associated dates.

The Procedural Conference took place, as scheduled, on Thursday, January 8, 2009. Following its consideration of the submissions of the participants, the Commission Panel, by Order G-3-09 dated January 15, 2009, directed that: the BCTC OATT Amendment Application, other than any portions of Part 6 dealing with the TransCanada Complaint, would be dealt with by way of a Written Hearing Process wherein BCTC would be the "applicant", with the corresponding right of reply; the TransCanada Complaint and relevant portions of Part 6 of the OATT Amendment Application would be dealt with by way of an Oral Hearing Process, wherein TransCanada would be the "applicant", with the corresponding right of reply; and the two matters would share a common evidentiary record. The Commission Panel also set a Regulatory Timetable for the two matters going forward. The Oral Hearing was scheduled to commence on April 29, 2009.

On April 6, 2009, by Commission Letter L-24-09 the Commission solicited comments from the parties on the potential attendance of the Alberta Electric System Operator ("AESO") at the Oral Hearing to act as amicus to provide limited evidence on matters surrounding documents in the evidentiary record with which it had the most familiarity as well as planning and operations coordination as between AESO and BCTC.

TransCanada welcomed the participation of AESO and suggested that its witness panel appear first to set the context for the oral hearing of the Complaint.

TransAlta Corporation, a Registered Intervenor in the BCTC OATT Amendment Application, objected to the attendance of AESO on the basis that its attendance was unnecessary as irrelevant to the issues and also unusual. TransAlta expressed concern that the lateness of the proposal to invite AESO to attend the Oral Hearing combined with the fact that AESO was not expected to file evidence in advance would make the process unfair.

BCTC also expressed concern and asked that, if AESO were to testify, its written evidence be provided to the parties as soon as possible and that considerable latitude be granted on cross examination of its witness panel.

BC Hydro/Powerex and NorthPoint Energy Solutions Inc. did not object to the attendance of AESO to testify on the matters as outlined in Commission Letter L-24-09.

By letter dated April 23, 2009 (Exhibit A-24), the Commission Panel confirmed the attendance of AESO in the role of amicus at the Oral Hearing for the purpose of providing context for both the TCE Complaint and OATT Amendment Application. The Commission Panel expressed the view that AESO was particularly well-suited to provide this evidence given its neutral status and first hand knowledge of the issues. In order to attempt to address the concerns expressed by TransAlta and BCTC and to assist the parties in their preparation for any cross-examination of AESO's witness panel, the Commission prepared Information Requests to AESO which were provided to the parties.

AESO provided responses to the Commission Panel's Information Requests under cover of a letter dated April 24, 2009.

The Oral Hearing proceeded for two days commencing April 29th, 2009. TransCanada's witness panel appeared first, followed by the AESO panel. Witness panels from NorthPoint, TransAlta and BCTC appeared, in that order, on the second day of the Oral Hearing. Subject to the filing of responses to outstanding undertakings, the evidentiary portion of the proceedings was declared closed at 4:59 p.m. on Thursday, April 30, 2009.

Written arguments were filed in general accordance with the Regulatory Timetable, concluding with BCTC's reply submission on its OATT Amendment Application on June 25, 2009.

LIST OF APPEARANCES

G. FULTON, Q.C.	Commission Counsel
P. FELDBERG C. BYSTROM	British Columbia Transmission Corporation
I. WEBB	British Columbia Hydro and Power Corporation and Powerex Corporation
D. WOOD C. BEST F. KARABETSOS	TransCanada Energy Limited
W. MILMAN	NorthPoint Energy Solutions Inc.
J. LANDRY	TransAlta Energy Marketing Corporation
J. QUAIL	B.C. Branch, B.C. Old Age Pensioners' Organization, Council Of Senior Citizens' Organizations, Federated Anti-Poverty Groups of B.C., West End Seniors' Network (collectively "BCOAPO")
R.B. WALLACE	Joint Industry Electricity Steering Committee (JIESC)

T. ROBERTS J. FRASER	Commission Staff
E. SWITLISHOFF G. ISHERWOOD	Contract Staff
ALLWEST REPORTING LTD.	Court Reporters

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

British Columbia Transmission Corporation
An Application to Amend the BCTC Open Access Transmission Tariff

and

A Complaint by TransCanada Energy Ltd.
Regarding the Service Agreement between TCE and BCTC
for Long Term Firm Point-to-Point Transmission Service

EXHIBIT LIST

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	Letter dated December 5, 2008 appointing the Commission Panel for the review of the BCTC Application to Amend the Open Access Transmission Tariff
A-2	Letter dated December 16, 2008 with Commission Order G-195-08 establishing a Procedural Conference and Regulatory Timetable
A-2-1	Submitted at Hearing dated April 29, 2009 Staff Witness Aid Spreadsheet
A-2-2	Submitted at Hearing dated April 30, 2009 System Operating Limit Policy 1.0
A-3	Letter dated December 16, 2008 to TransCanada Energy Ltd. with Commission Order G-195-08 establishing a Procedural Conference and Regulatory Timetable
A-4	Letter dated January 15, 2009 issuing Commission Order G-3-09 establishing a Regulatory Timetable
A-5	Commission letter dated October 17, 2008 to BCTC requesting Comments on the TransCanada Energy Ltd. October 9, 2008 Complaint
A-6	Commission Letter L-53-08 dated November 13, 2008 to TCE summarizing possible process and participants

Exhibit No.	Description
A-7	Commission Letter dated December 1, 2008 to BCTC and TCE issuing Order G-175-08 regarding processing of rollover requests on BCH Service Agreements dated November 27, 2008
A-8	Letter dated January 22, 2009 issuing the Reasons for Decision as Appendix B to Order G-3-09
A-9	Letter Dated February 6, 2009 and Commission Information Request No. 1
A-10	Letter Dated February 9, 2009, Approval of Application by BCOAPO to add co-counsel, Leigh Worth
A-11	Letter dated February 11, 2009 and Commission Information Request No. 1 to TransCanada Energy
A-12	Letter dated March 2, 2009 requesting comments from the Applicant and Intervenor regarding TransCanada Energy's request to amend the hearing date in the Regulatory Timetable
A-13	Letter dated March 16, 2009 and Order G-26-09 amending the Regulatory Timetable for the Oral Hearing
A-14	Letter dated March 24, 2009 requesting BCTC to file the (U.S.) Federal Energy Regulatory Commission ("FERC") Order 890-C
A-15	Letter dated March 27, 2009 and Commission Information Request on Intervenor Evidence No. 1 to TransAlta
A-16	Letter dated March 27, 2009 and Commission Information Request on Intervenor Evidence No. 1 to NorthPoint
A-17	Letter dated March 27, 2009 and Commission Information Request on Intervenor Evidence No. 1 to TransCanada Energy
A-18	Letter No. L-22-09 dated March 30, 2009 request submissions regarding Pre-Hearing Conference
A-19	Letter dated April 06, 2009 Further to Order G-195-08 Regulatory Timetable - IR No. 2
A-20	Letter L-24-09 dated April 6, 2009 re: Alberta Electric System Operator ("AESO") participation
A-21	Letter dated April 6, 2009 issuing Information Request No. 2 to NorthPoint

Exhibit No.	Description
A-22	Letter dated April 8, 2009 cancelling 2nd Procedural Conference and requesting submissions from BCTC, TCE, and Registered Intervenor re process details
A-23	Letter dated April 23, 2009 and Commission Panel Information Request to the Alberta Electric System Operator
A-24	Letter dated April 23, 2009 providing Reasons on the attendance and timing of the Alberta Electric System Operator at the Oral Hearing, order of all witness panels and written argument
A-25	Letter dated April 23, 2009 providing Participants with Procedural Information for the Oral Public Hearing

BRITISH COLUMBIA TRANSMISSION CORPORATION DOCUMENTS

B1-1	Letter dated November 21, 2008 filing Application to Amend the Open Access Transmission Tariff
B1-2	Letter dated December 15, 2008 issuing Errata to the Application to Amend the Open Access Transmission Tariff
B1-3	Letter dated November 25, 2008 filing Corrections to Application
B1-4	BCTC Response dated October 31, 2008 to Commission letter dated October 17, 2008 (Exhibit A-4) requesting comments on TCE Complaint (Exhibit B2-1)
B1-5	Email dated January 9, 2009 confirming filing by BCTC of FERC Orders 890 (Exhibit B1-5-1), 890-A (Exhibit B1-5-2) and 890-B (Exhibit B1-5-3)
B1-5-1	BCTC filed on January 8, 2009 FERC Order 890
B1-5-2	BCTC filed on January 8, 2009 FERC Order 890-A
B1-5-3	BCTC filed on January 8, 2009 FERC Order 890-B
B1-6	Letter dated February 19, 2009 BCTC IR No 1 to TCE
B1-7	Letter dated February 27, 2009 BCTC responses to BCUC IR-1, BC Hydro IR-1, BCOAPO IR-1, TransAlta IR-1, and TransCanada Energy IR-1, with the exception of TransCanada Energy IR 1.6.3. TransCanada Energy IR 1.6.3
B1-7-1	Letter dated March 19, 2009 BCTC Errata filing to Exhibit B1-7

Exhibit No.	Description
B1-8	Letter dated March 05, 2009 via Email BCTC response to IR No. 1
B1-9	Letter dated March 05, 2009 BCTC Response to L-15-09
B1-10	Letter dated March 05, 2009 BCTC Updated Schedule 09
B1-11	Letter dated March 13, 2009 BCTC Supplemental Evidence TCE-Complaint
B1-12	Letter dated March 23, 2009 BCTC enclosed for filing FERC Order 890-C
B1-13	Letter dated April 03, 2009 BCTC response to L-22-09, whether a second procedural conference is required.
B1-14	Letter dated April 06, 2009 BCTC's Information Request No. 1 to Trans Alta Energy
B1-15	Letter dated April 06, 2009 BCTC's Information Request No. 1 to NorthPoint
B1-16	Letter dated April 14, 2009 BCTC writes in response to BCUC Letter L-24-09 and Letter L-26-09, issued April 8, 2009
B1-17	Letter dated April 15, 2009 BCTC writes in response to BCUC IR No. 2, NorthPoint IR No.2 and TransCanada Energy IR No. 2
B1-17-1	Letter dated April 27, 2009 BCTC filing Errata to Exhibit B1-17, April 15, 2009 responses to IR-2
B1-18	Letter dated April 22, 2009 BCTC Rebuttal Evidence in the OATT Hearing component
B1-19	Letter dated April 27, 2009 BCTC filing of direct evidence of the BCTC panel
B1-20	Submitted at Hearing dated April 29, 2009 Table on TCE Transmission capacity 2007 2008 2009 (Jan)
B1-21	Submitted at Hearing dated April 29, 2009 FERC PDF (Unofficial) 12/19/2008
B1-22	Submitted at Hearing dated April 29, 2009 Bulletin Index 2004 Amended Business Practices
B1-23	Submitted at Hearing dated April 29, 2009 Methodology for Assessing Available Transmission Capability
B1-24	Submitted at Hearing April 30, 2009 Table Data
B1-25	Submitted at Hearing April 30, 2009 BCTC Opening Statement

Exhibit No.	Description
B1-26	Letter dated May 08, 2009 BCTC responses to undertakings received during the Oral Public Hearing in the TCE Complaint Hearing
B1-27	Letter dated May 13, 2009 BCTC response to Mr. Wood's letter
<i>TRANSCANADA ENERGY LTD. DOCUMENTS</i>	
B2-1	TRANSCANADA ENERGY LTD. (TCE) - TCE Complaint dated October 9, 2008
B2-2	TCE November 6, 2008 Response to BCTC October 31, 2008 response to Commission request for Comments dated October 17, 2008
B2-3	TCE letter dated November 28, 2008 commenting on BCTC's filing of its OATT Amendment Application (includes response to TCE Complaint) and requests BCTC's application for interim order be denied
B2-4	TCE Letter dated February 19, 2009 Request to Amend Proceeding Schedule
B2-5	Letter dated February 13, 2009 TCE IR No.1
B2-6	Letter dated March 05, 2009 TCE Responses to BCUC IR No.1
B2-7	Letter dated March 05, 2009 TCE Responses to BCTC IR No.1
B2-8	Letter dated March 05, 2009 TCE Responses to TransAlta IR No.1
B2-9	Letter dated March 06, 2009 TCE Responses to BCUC IR No.1
B2-10	Letter dated March 06, 2009 TCE Responses to BCTC IR No.1
B2-11	Letter dated March 13, 2009 Direct Testimony Craig-Roach
B2-12	Letter dated March 27, 2009 TCE's Information Requests on Intervenor Evidence directed to TransAlta Energy Marketing Corp.
B2-13	Letter dated April 3, 2009 issuing TCE's comments regarding second procedural conference.
B2-14	Letter dated April 06, 2009 TCE's IR's to BCTC on its evidence in Part 6 and its Supplementary Evidence submitted on March 13, 2009
B2-15	Letter dated April 09, 2009 TCE response to BCUC L-24-09 Exhibit A-20
B2-16	Letter dated April 15, 2009 TCE response to BCUC IR No. 1 Exhibit A-27

Exhibit No.	Description
B2-17	Letter dated April 22, 2009 testimony of Dr. Craig R. Roach submitted as rebuttal evidence on behalf of TCE for its Complaint
B2-18	Letter dated April 27, 2009 via email TCE opening statement on witness evidence
B2-19	Letter dated May 12, 2009 via email Oral hearing excerpt of witness undertaking
B2-20	Letter dated May 15, 2009 TCE's Undertakings U-1, U-2, U-3 and U-4

INTERVENOR DOCUMENTS

C1-1	BRITISH COLUMBIA HYDRO AND POWER AUTHORITY – Filing dated December 18, 2008 request for Registered Intervenor Status
C1-2	Web filing dated January 28, 2009 by Mr. Jeff Christian, Lawson Lundell LLP as counsel for BC Hydro
C1-3	Letter dated February 18, 2009 BC Hydro response to IR No.1 to BCTC
C1-4	Letter dated March 05, 2009 BC Hydro response to L-15-09
C1-5	Letter dated April 02, 2009 BC Hydro Response to BCUC letter L-22-09 (Exhibit A-18) re: Second Procedural Conference
C1-6	Letter dated April 14, 2009 BC Hydro Response to BCUC letter L-24-09 and L-26-09 re: procedural matters
C1-7	Letter dated May 29, 2009 submissions of BC Hydro and Powerex Corp re TCE complaint
C2-1	TRANSCANADA ENERGY LTD. (TCE) – Filing dated December 19, 2008 request for Registered Intervenor Status
C3-1	NORTHPOINT ENERGY SOLUTIONS INC. – Filing dated December 22, 2008 request for Registered Intervenor Status
C3-2	SaskPower/NorthPoint Energy Solutions letter dated October 24, 2008 requesting intervenor status and commenting on the TCE Complaint
C3-3	Letter dated March 13, 2009 received via email - NorthPoint statement of evidence
C3-4	Letter dated March 31, 2009 Re: second procedural conference, this is to advise that NorthPoint knows of no reason for such a conference.

Exhibit No.	Description
C3-5	Letter dated April 02, 2009 NorthPoint filing IR No. 1 to BCTC as Respondent in the TCE Complaint proceeding
C3-6	Letter dated April 14, 2009 received via email – NorthPoint response to BCUC letter L-24-09 and L-26-09
C3-7	Letter dated April 15, 2009 received via email - NorthPoint response to BCTC IR No 1
C3-8	Letter dated April 15, 2009 received via email - NorthPoint response to BCUC IR No 1
C3-9	Letter dated April 15, 2009 received via email - NorthPoint response to BCUC IR No 2
C3-10	Submitted at Hearing April 30, 2009 Direct evidence of NorthPoint Energy Solutions Panel
C4-1	CARGILL LIMITED – Letter dated December 30, 2008 request for non-active Intervenor Status from Philip Pauls
C4-2	Cargill Limited letter dated November 4, 2008 requesting notification of further process on the TCE Complaint
C5-1	BCOAPO <i>ET AL</i> – Letter dated January 6, 2009 request for Intervenor Status from Mr. Jim Quail, BC Public Interest Advocacy Centre (BCPIAC)
C5-2	Letter dated January 26, 2009 request addition of co-counsel, Ms. Leigha Worth, BC Public Interest Advocacy Centre
C6-1	POWEREX CORP (POWEREX) – Letter dated January 6, 2009 request for Intervenor Status
C7-1	TRANSALTA CORPORATION (TRANSALTA) – Letter dated January 6, 2009 request for Registered Intervenor status
C7-2	TransAlta Letter dated February 13, 2009 filing Information Request No. 1 to BCTC Re: OATT
C7-3	Letter dated February 19, 2009 Information Requests from TransAlta to TCE

Exhibit No.	Description
C7-4	Letter dated March 13, 2009 TransAlta Corporation Evidence
C7-5	Letter dated April 6, 2009 TransAlta's response to second procedural conference
C7-6	Letter dated April 14, 2009 TransAlta's Response on whether the AESO should attend the oral hearing to provide evidence
C7-7	Letter dated April 15, 2009 TransAlta's Response to BCTC IR No. 1
C7-8	Letter dated April 15, 2009 TransAlta Letter to TCE re responses to IR No. 1
C7-9	Letter dated April 15, 2009 TransAlta Letter to BCUC re responses to IR No. 1
C7-10	Letter dated April 24, 2009 filing the Curriculum Vitae of Mr. Darren Gogol
C8-1	JOINT INDUSTRY ELECTRICITY STEERING COMMITTEE (JIESC) – Letter dated January 8, 2009 request for Registered Intervenor status
C9-1	ALBERTA ELECTRIC SYSTEM OPERATOR (AESO) – Letter dated April 17, 2009 response to Letter No. L-26-09
C9-2	Letter dated April 24, 2009 filing responses to Commission Information Request (Exhibit A-23)
C9-3	Letter dated April 27, 2009 via email filing AESO witness panel

DÉCISION

QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2010-053	P-110-1565 P-110-1597 P-110-1678	11 mai 2010
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PRÉSENTS :

Jean-Paul Théorêt
Richard Lassonde
Marc Turgeon
Régisseurs

Newfoundland and Labrador Hydro
Demanderesse

et

Hydro-Québec
Défenderesse

Décision

*Plaintes déposées en vertu de l'article 86 de la Loi sur la
Régie de l'énergie*

« Q. [278] *But if a resource is designated as a network resource, HQD doesn't need to make a reservation under Part IV for transmission rights, the rights exist by the simple fact that it is from a designated resource for purposes of supplying the heritage... the native load?*

A. *That's right.*

Q. [279] *You agree...*

A. *Yes¹¹⁸. »*

[263] Il ressort donc des dispositions des articles 36.3 et 13.2 des Tarifs et conditions, de la décision D-2006-66¹¹⁹ de la Régie et de la preuve de l'expert Sinclair qu'HQD jouit d'une priorité de transport de niveau 1 lorsqu'elle dessert sa charge locale à partir de ressources désignées, sans nécessité d'effectuer de réservations. Il ressort des mêmes articles des Tarifs et conditions, de la preuve et de la décision D-2006-66 qu'une réservation de service ferme de point à point à long terme en vertu de la partie II des Tarifs et conditions prend rang après le service de transport pour l'alimentation de la charge locale à partir d'une ressource désignée d'HQD antérieure à cette réservation¹²⁰.

[264] Donc, aux termes des Tarifs et conditions, HQP ou HQD n'avait pas à effectuer une réservation pour obtenir le service de transport sur les Lignes de CF pour le service d'alimentation de la charge locale.

6.4.3 EST-CE QUE LES LIGNES DE CF SONT UN CHEMIN AU SENS DES TARIFS ET CONDITIONS QUI DOIT FAIRE L'OBJET D'UN AFFICHAGE SUR OASIS?

[265] Les positions respectives des parties sur cette question sont résumées plus haut.

[266] La Régie ne retient pas la position de NLH voulant que depuis la séparation fonctionnelle, les Lignes de CF soient devenues un chemin utilisé par plus d'un utilisateur, en l'occurrence HQP, HQM et HQD ou que ces lignes soient une interconnexion ou *posted path* entre deux systèmes ou zones de contrôle et que cela nécessitait un affichage sur OASIS de l'ATC ou de la TTC.

¹¹⁸ Témoignage de R.A. Sinclair, NS, 25 janvier 2010, volume 5, page 115, questions 278 et 279; voir également page 117, question 287.

¹¹⁹ Dossier R-3549-2004, page 46.

¹²⁰ Pièce HQT-30, rapport de P.Q. Hanser, décembre 2008, paragraphes 41 et 42; témoignage de S. Clermont, NS, 28 janvier 2010, volume 8, page 171, question 6, et pages 175 et 176, questions 9 à 11; témoignage de R.A. Sinclair, NS, 25 janvier 2010, volume 5, page 115, questions 278 et 279; voir également page 117, question 287.

[267] La preuve prépondérante est plutôt à l'effet qu'avant le 1^{er} avril 2009, personne d'autre qu'Hydro-Québec n'utilisait ou ne pouvait utiliser les Lignes de CF. Hydro-Québec, en vertu du Power Contract, « *est en droit et a convenu d'acheter la presque totalité de la puissance et de l'énergie produites par la Centrale CF, à l'exception d'une capacité de 225 MW au bénéfice de Twin Falls Power Corporation Limited et d'une option visant la reprise d'un maximum de 300 MW au bénéfice de CF(L)Co pour consommation à l'extérieur du Québec*¹²¹ ».

[268] Le seul changement de l'utilisation des Lignes de CF par Hydro-Québec est survenu le 1^{er} avril 2009 alors que NLH a demandé et obtenu un droit de transport sur ces lignes pour exporter et vendre à des tiers 265 MW en vertu de trois conventions de service pour le service de transport ferme à long terme de point à point¹²².

[269] À compter du 1^{er} avril 2009, HQT a procédé à un affichage sur OASIS pour refléter l'utilisation des Lignes de CF par NLH à des fins autres que la desserte de la charge locale du Québec :

« [l]e site OASIS du Transporteur montre les capacités (TTC et ATC) des interconnexions pour des périodes futures données. Chacune des interconnexions y est désignée comme un chemin, relié au point HQT qui représente l'ensemble des points de réception sur le réseau du Transporteur, sauf les interconnexions elles-mêmes¹²³. »

[270] La preuve démontre que le but de l'affichage sur OASIS est de communiquer à la clientèle du service de transport, de façon efficace et non discriminatoire, des informations pertinentes qui ont une utilité commerciale et qui sont susceptibles d'avoir un impact sur les décisions relatives à l'achat ou à la vente d'électricité¹²⁴.

[271] Il est également établi en preuve que le concept de chemin réfère à une notion commerciale, qui se distingue de l'installation physique de raccordement¹²⁵ :

¹²¹ Énoncé de positions et argumentation d'HQT, dossier P-110-1565, page 27, paragraphe c).

¹²² Pièce C-40, dossier P-110-1565, courriel de transmission du 30 mars 2009 et 4 conventions de service entre NLH et HQT.

¹²³ Appendice C des Tarifs et conditions.

¹²⁴ Énoncé de positions et argumentation d'HQT, dossier P-110-1565, page 24, paragraphe 110.

¹²⁵ Énoncé de positions et argumentation d'HQT, dossier P-110-1565, page 25, paragraphe 112; témoignage de S. Clermont, NS, 29 janvier 2010, volume 9, pages 25 à 28, questions 32 à 35.

« [U]n chemin ou « path » affiché sur OASIS relie un point de réception à un point de livraison aux fins de la fourniture d'un service de transport à un client admissible du service de transport¹²⁶ ».

[272] La preuve prépondérante est également à l'effet qu'avant l'ouverture du chemin LAB-HQT le 1^{er} avril 2009, les Lignes de CF n'étaient pas un chemin au sens des Tarifs et conditions mais un lien de raccordement interne.

[273] À cet égard, les faits suivants allégués par HQT ne font l'objet d'aucune preuve contraire et, il faut le présumer, devaient également être connus de NLH en tant qu'actionnaire à hauteur de 65,8 % de CF(L)Co, propriétaire et opérateur de la Centrale CF :

- « a) La construction des lignes a été réalisée par CF(L)Co dans le cadre et aux fins de l'exécution du Power Contract de 1969 suivant des devis élaborés par Hydro-Québec spécifiquement à cette fin;
 - Power Contract, définition de « Plant » et art. 4.1 et 7.1;
 - G. Bennett, 21 janv. 2010, N.S. vol. 3, p. 151;
 - S. Clermont, 28 janv. 2010, N.S. vol. 8 p. 155, Q. 254;
- b) Les flux électriques sur les lignes sont à sens unique et servent exclusivement à l'injection de puissance et d'énergie produites par la Centrale CF dans le réseau d'HQT, en l'absence de toute autre utilisation;
 - Rapport de P. Q. Hanser, Décembre 2008, para. 45, Pièce HQT-30;
 - Décision D-2006-66, p. 11;
 - S. Clermont, 28 janv. 2010, N.S. vol. 8 p. 155, Q. 254; 29 janv. 2010, N.S. vol. 9 p. 38, Q. 55;
- c) En vertu du Power Contract, HQ est en droit et a convenu d'acheter la presque totalité de la puissance et de l'énergie produites par la Centrale CF, à l'exception d'une capacité de 225 MW au bénéfice de Twin Falls Power Corporation Limited et d'une option visant la reprise d'un maximum de 300 MW au bénéfice de CF(L)Co pour consommation à l'extérieur du Québec;
 - Power Contract, art. 2.1, 4.2.2 et 6.6;
- d) Les lignes sont exploitées à très haute tension (735 kV) pour minimiser les pertes lors du transport vers le réseau d'HQT;
 - Voir, notamment, la Pièce HQT-7 à la p. 9;
- e) La Centrale CF, bien que située hors Québec, est exploitée en mode synchrone avec le réseau d'HQT;

¹²⁶ Énoncé de positions et argumentation d'HQT, dossier P-110-1565, page 25, paragraphe 113.

- Voir notamment, la Pièce HQT-7 à la p. 10;
- S. Clermont, 28 janv. 2010, N.S. vol. 8 p. 155-156, Q. 255;
- f) Les lignes n'avaient pas été conçues ou construites pour un usage par des tiers à des fins commerciales et n'ont, de mémoire d'homme, jamais été utilisées à cette fin, et cette réalité historique a été acceptée par le marché;
- Voir, notamment, la décision D-2006-66, p. 11;
- S. Clermont, 29 janv. 2010, N.S. vol. 9 p. 37-38, Q. 54-55¹²⁷ ».

[274] La Régie a déjà reconnu que les Lignes de CF étaient un lien de raccordement interne, bien que dans un autre contexte et à d'autres fins :

« La Régie porte une attention particulière à la notion d'équipement de transport associé à la production en raison des caractéristiques propres au réseau, notamment son étendue géographique, le rôle particulier de certaines lignes et la nature essentiellement hydraulique du parc de production. Ainsi, si les centrales n'avaient pas été construites, les équipements de transport associés, dont une très grande partie des lignes THT, n'auraient pas été requis. Le rôle de ces équipements est d'intégrer la production électrique des centrales vers les centres de consommation, ce qui explique que le flux électrique soit, pour l'essentiel, à sens unique.

Les équipements regroupés dans la fonction Raccordement des centrales, comprenant [...] les lignes de raccordement, possèdent ces caractéristiques et constituent, de ce fait, des équipements de transport associés à la production. Pour la Régie, d'autres équipements respectent également ce critère.

Il en est ainsi des lignes THT depuis l'interconnexion avec Churchill Falls qui sont utilisées exclusivement en mode réception [...] ¹²⁸. » [nous soulignons]

[275] L'article 4 des Tarifs et conditions réfère aux termes et conditions relatifs à l'OASIS énoncés au ch. 18 CFR 37 des règlements de la FERC (les « règles de l'OASIS »). Pour que ces règles s'appliquent au Québec, « [l]'OASIS doit être conforme aux décisions, ordonnances et règlements de la Régie¹²⁹ ».

[276] Rien n'indique que les notions de *path* et de *posted path* des règles de l'OASIS ne soient pas conformes aux décisions, ordonnances et règlements de la Régie. Il est donc utile de voir si les Lignes de CF peuvent être considérées comme un chemin aux fins de ces règles.

¹²⁷ Énoncé de positions et argumentation d'HQT, dossier P-110-1565, pages 26 et 27, paragraphe 120.

¹²⁸ Décision D-2006-66, dossier R-3549-2004, page 11.

¹²⁹ Article 4 des Tarifs et conditions.

[277] Les règles de l'OASIS prévoient que l'obligation d'afficher un ATC n'existe qu'à l'égard des *posted path* et non à l'égard des installations physiques de transport (lignes internes de raccordement ou interconnexions) qui ne constituent pas des chemins ou *path* :

Règles de l'OASIS :

« 37.6 [...]

(b) *Posting transfer capability. The available transfer capability on the Transmission Provider's system (ATC) and the total transfer capability (TTC) of that system shall be calculated and posted for each Posted Path as set out in this section.*

(1) *Definitions. For purposes of this section the terms listed below have the following meanings:*

(i) *Posted path means any control area to control area interconnection; any path for which service is denied, curtailed or interrupted for more than 24 hours in the past 12 months; and any path for which a customer requests to have ATC or TTC posted. For this last category, the posting must continue for 180 days and thereafter until 180 days have elapsed from the most recent request for service over the requested path. For purposes of this definition, an hour includes any part of an hour during which service was denied, curtailed or interrupted.*

[...]

(iv) *The word interconnection, as used in the definition of "posted path" means all facilities connecting two adjacent systems or control areas¹³⁰.* » [nous soulignons]

[278] Les Lignes de CF, parce qu'elles sont un lien interne de raccordement tel que la Régie l'a déjà souligné, ne pouvaient être un chemin sur lequel un client pouvait réserver de la capacité de transport, c'est-à-dire un *path for which a customer requests to have ATC or TTC posted*.

[279] La FERC a même jugé que l'affichage sur OASIS était inutile lorsqu'un chemin a peu ou pas de valeur commerciale :

¹³⁰ Énoncé de positions et argumentation d'HQT, dossier P-110-1565, pages 25 et 26, paragraphe 115.

« *The Commission will not require the posting of all paths across control areas, since customers can request to have ATC [Available Transfer Capability] and TTC [Total Transfer Capability] posted for any path. Given that customers can request to have ATC and TTC posted for any path, adopting CCEM's proposal would burden OASIS sites with a very large number of posted paths that may have little commercial value*¹³¹. » [nous soulignons]

[280] Donc, les Lignes de CF continuent d'être utilisées comme lien de raccordement de la Centrale CF au réseau d'HQT, au bénéfice exclusif d'Hydro-Québec pour l'alimentation de la charge locale du Québec. Les droits récents conférés à NLH pour exporter une partie de la production de la Centrale CF en utilisant les Lignes de CF ne changent pas cette situation de fait qui remonte à plusieurs décennies en vertu du Power Contract.

[281] Pour toutes ces raisons, la Régie conclut que les Lignes de CF ne constituaient pas un chemin au sens des Tarifs et conditions et qu'HQT n'avait aucune obligation d'afficher l'ATC ou la TTC sur ces lignes avant l'ouverture du chemin LAB-HQT le 1^{er} avril 2009.

6.4.4 EST-CE QU'HQT S'EST CONFORMÉE AUX TARIFS ET CONDITIONS EN CALCULANT L'ATC SUR LA BASE DES FLUX ÉLECTRIQUES HISTORIQUES ET NON DES DROITS D'HYDRO-QUÉBEC À DES LIVRAISONS FERMES AU POWER CONTRACT?

[282] NLH plaide que, même si la Régie décidait qu'HQP ou HQD a une priorité pour le service de transport sur les Lignes de CF, l'ATC n'aurait pas été correctement établi, puisqu'il doit être fonction des engagements contractuels fermes des contrats entre Hydro-Québec et CF(L)Co¹³².

[283] NLH s'appuie, entre autres, sur le témoignage de l'expert Sinclair qui, bien qu'il accepte l'idée que les droits de transport des ressources alimentant la charge locale puissent être basés sur l'usage historique du réseau, précise cependant qu'ils doivent être reliés au transport ferme sur le réseau (*commensurate with the firmness of the transmission flows*)¹³³.

¹³¹ Énoncé de positions et argumentation d'HQT, dossier P-110-1565, page 26, paragraphe 116.

¹³² Argumentation de NLH, pages 34 et 35, paragraphe 134.

¹³³ Argumentation de NLH, pages 75 et 76, paragraphe 304.

[284] NLH propose une analyse de la teneur des obligations au Power Contract entre Hydro-Québec et CF(L)Co pour déterminer s'il s'agit d'obligations conditionnelles ou suspensives et conclut de cette analyse qu'une partie des quantités d'énergie à ce contrat est livrable si l'énergie est disponible et que les obligations au contrat GWAC sont conditionnelles ou suspensives. Selon NLH, l'énergie livrée en vertu de ces contrats ne peut donc être considérée comme de l'énergie ou de la capacité ferme mise à la disposition d'Hydro-Québec.

[285] La Régie n'a pas à se prononcer sur la nature des obligations de CF(L)Co au Power Contract et au contrat GWAC (conditionnelles, suspensives, etc.) mais doit plutôt tenir compte de ce qui est à la connaissance d'HQT, c'est-à-dire les quantités d'énergie livrées à Hydro-Québec à partir de la Centrale CF et qui transitent sur son réseau. En d'autres mots, qu'Hydro-Québec ait reçu, depuis plus de 40 ans, l'électricité produite par la Centrale CF en vertu d'obligations fermes ou additionnelles non fermes contractées par CF(L)Co, ne change pas la réalité historique des flux d'électricité sur les lignes de transport d'Hydro-Québec en provenance de la Centrale CF pour alimenter la charge locale du Québec. Ainsi, la distinction que fait l'expert Sinclair pour NLH entre *historical firm usage* et *historical non-firm usage* est non pertinente.

[286] La méthode de calcul de l'ATC prévue à l'Appendice C des Tarifs et conditions définit l'ATC comme suit :

« La capacité de transport disponible (ATC) est la quantité de la capacité de transport qui n'est pas utilisée après avoir tenu compte de la marge de fiabilité du réseau et des exigences pour :

- (a) satisfaire aux obligations du service de transport existant pour la livraison des ressources aux clients de la charge locale;
- (b) satisfaire aux obligations des contrats existants en vertu desquels le service de transport est fourni;
- (c) satisfaire aux obligations des demandes valides existantes, acceptées ou en attente, de service de transport. »

[287] Il est également précisé à l'Appendice C que les lignes directrices et les principes de l'industrie sont suivis pour évaluer l'ATC : pratiques usuelles des services publics, critères et lignes directrices du *Northeast Power Coordinating Council* (NPCC), du NERC, et du *North American Energy Standards Board* (NAESB), ainsi que les critères et directives applicables à HQT.

[288] En fait, NLH ne conteste pas la méthode de calcul de l'ATC sur les Lignes de CF mais plutôt les données à la base de ce calcul, soit les données historiques réelles mesurées plutôt que les valeurs de transit ferme prévues au Power Contract.

[289] En fait et dans le cours normal des affaires, HQT ne dispose d'aucune autre information que les flux historiques réels mesurés sur les Lignes de CF¹³⁴ pour déterminer l'ETC. HQT n'a pas accès à d'autres informations lui permettant de quantifier la valeur du transit sur ces lignes¹³⁵. Il va de soi qu'HQT ne peut planifier son réseau en fonction de données découlant de contrats d'approvisionnement dont elle ignore le contenu.

[290] Il est utile de rappeler que l'ouverture des marchés ou des réseaux de transport d'électricité (*open access*) ne devait pas limiter les droits d'approvisionnement des clients de la charge locale (*native load*) ni, par conséquent, limiter les flux historiques d'électricité servant à cette fin :

« To prevent native load customers from being harmed, FERC has determined that the native load customers of vertically-integrated utilities should have access to the same generation sources that they had access to prior to the implementation of open access¹³⁶. »

« [...] The amount of transmission capacity available to wholesale and unbundled retail customers under the Final Rule pro forma tariff is clearly affected by the amount of transmission capacity that the transmission provider reserves for the use of its native load customers and the future load growth of those customers [...]»¹³⁷. »

[291] Sur la base de la preuve et des arguments qui lui ont été soumis, la Régie conclut qu'HQT s'est conformée aux Tarifs et conditions en calculant l'ATC sur la base des flux électriques historiques en provenance de la Centrale CF.

¹³⁴ NS, 3 février 2010, volume 12, pages 95 et 96.

¹³⁵ NS, 3 février 2010, volume 12, page 98.

¹³⁶ Pièce HQT-30, rapport de P.Q. Hanser, décembre 2008, page 17, paragraphe 43.

¹³⁷ FERC Order 888, Docket Nos RM-8-000 and RM94-7-001, page 323.

DÉCISION

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QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2011-040

P-130-002

6 avril 2011

PRÉSENTS :

Louise Rozon
Gilles Boulianne
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Régisseurs

Newfoundland and Labrador Hydro
Demanderesse en révision

et

Hydro-Québec
Intimée

*Demande en révision de la décision D-2010-053 rendue
dans les dossiers de plaintes P-110-1565, P-110-1597 et
P-110-1678*

[115] La Régie, en révision, examine maintenant l'ensemble des motifs invoqués par NLH quant à l'obligation d'afficher un ATC sur OASIS.

7.2.1 NOTION DE LIEN DE RACCORDEMENT INTERNE EN VERTU DES TARIFS ET CONDITIONS ET DES RÈGLES DE L'OASIS⁶⁹

[116] Selon NLH, la première formation n'aurait pas interprété correctement les règles de l'OASIS applicables au Québec. Selon l'interprétation correcte de ces règles que NLH propose, des installations reliant deux réseaux voisins forment des interconnexions et une interconnexion constitue un *posted path*. Par conséquent, la capacité de transport sur un *posted path* doit être affichée.

[117] La première formation n'a pas retenu cette interprétation de NLH. Elle a plutôt adopté une interprétation large de la notion de lien de raccordement interne qui tenait compte, notamment, du but visé de l'affichage sur OASIS qui est « *de communiquer à la clientèle du service de transport de façon efficace et non discriminatoire des informations pertinentes qui ont une utilité commerciale et qui sont susceptibles d'avoir un impact sur les décisions relatives à l'achat ou à la vente d'électricité*⁷⁰. »

[118] De plus, elle a interprété le concept de chemin, qui se retrouve dans les règles de l'OASIS, comme référant à une notion commerciale, qui se distingue de l'installation physique de raccordement⁷¹. Elle a ajouté que ces règles prévoient que l'obligation d'afficher un ATC n'existe qu'à l'égard des *posted path* et non à l'égard des installations physiques de transport (lignes internes de raccordement ou interconnexions) qui ne constituent pas des chemins ou *path*⁷².

⁶⁹ Paragraphes 115 à 116 de la demande en révision de NLH.

⁷⁰ Paragraphe 270 de la Décision.

⁷¹ Paragraphe 271 de la Décision.

⁷² Paragraphe 277 de la Décision.

[119] La première formation a précisé également qu'en vertu de l'article 4 des Tarifs et conditions, pour que les règles de l'OASIS s'appliquent au Québec, elles doivent être conformes aux décisions, ordonnances et règlements de la Régie⁷³. C'est notamment la raison pour laquelle la première formation a tenu compte, lorsqu'elle a interprété les règles de l'OASIS, de la décision D-2006-66 de la Régie⁷⁴.

[120] Après examen de l'exercice d'interprétation effectué par la première formation de la notion de lien de raccordement interne en vertu des Tarifs et conditions et des règles de l'OASIS, la Régie, en révision, ne constate aucune erreur. La première formation a adopté une interprétation large et non restrictive des règles applicables, en donnant effet aux objectifs poursuivis par ces règles, tel que le prévoit la *Loi d'interprétation* :

« 41. Toute disposition d'une loi est réputée avoir pour objet de reconnaître des droits, d'imposer des obligations ou de favoriser l'exercice des droits, ou encore de remédier à quelque abus ou de procurer quelque avantage.

Une telle loi reçoit une interprétation large, libérale, qui assure l'accomplissement de son objet et l'exécution de ses prescriptions suivant leurs véritables sens, esprit et fin⁷⁵. »

[121] Par conséquent, la Régie, en révision, ne retient pas ce motif de révision de NLH.

7.2.2 VALEUR COMMERCIALE DES LIGNES DE CF SELON LES TARIFS ET CONDITIONS⁷⁶

[122] NLH est d'avis que la première formation a commis une erreur en concluant à tort que les Lignes de CF n'étaient pas un chemin avec une valeur commerciale selon les Tarifs et conditions, mais un raccordement interne et qu'HQT n'était donc pas tenue d'afficher la capacité de transport sur OASIS conformément aux Tarifs et conditions.

⁷³ Paragraphe 275 de la Décision.

⁷⁴ Paragraphe 274 de la Décision.

⁷⁵ *Loi d'interprétation*, L.R.Q., chapitre I-16.

⁷⁶ Paragraphes 117 à 133 de la demande en révision de NLH.