

QUÉBEC

RÉGIE DE L'ÉNERGIE

**R-3669-2008
Phase 2**

**HYDRO-QUÉBEC, when carrying on
electric transmission activities**

and

Intervenors

EXPERT REPORT

OF

CRAIG R. ROACH, Ph.D.

ON BEHALF OF

ÉNERGIE BROOKFIELD MARKETING INC.

SEPTEMBER 28, 2010

BOSTON PACIFIC COMPANY, INC.

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I. QUALIFICATIONS

1. My name is Craig R. Roach. I am the President of Boston Pacific Company, Inc. (Boston Pacific). My business address is 1100 New York Avenue NW, Suite 490 East, Washington, DC 20005.
2. I have thirty-five years of experience with investments in, litigation concerning, and policies for the electricity business and other energy businesses. Today, much of my work involves advising regulatory commissions and others on major electricity industry policies, procurements, and investments.
3. I have extensive experience as an expert witness in the electricity business. I have testified or submitted comments before the Federal Energy Regulatory Commission on more than 30 occasions and before 24 State Commissions (some on multiple occasions). I have testified before three Canadian Provincial Boards, including the Régie de l'énergie. I also have testified in arbitrations, in State Courts, in Federal Court, before a City Council, and before a U.S. Congressional Sub-Committee. I have attached a list of my testimony and other publications in Attachment One.
4. I earned my Ph.D. in Economics from the University of Wisconsin. I earned my B.S. in Economics, *cum laude*, from John Carroll University. I now serve

on the Advisory Board to the University of Wisconsin's Department of
Economics.

II. THE HARMONIZATION OF ATC ISSUE

A. Purpose, Background, and Summary

1. Purpose and Background

5. The purpose of Section II of my Report is to respond to Hydro-Québec TransÉnergie's (HQT's) proposed changes to its methodology for calculating Available Transfer Capability or ATC on its interconnections with neighboring systems. These proposed changes are reflected in the new Attachment C-1 which is part of HQT's proposed modifications to its Open Access Transmission Tariff or OATT.¹ Mr. Philip Q. Hanser is HQT's expert witness on this topic.

6. My focus in this section is on Attachment C-1 by which HQT proposes to take account of conditions in neighboring transmission systems when calculating ATC for interconnections with those systems. It is my understanding that, for the Québec-New England Intertie, HQT has not previously taken account of such conditions in neighboring systems when calculating ATCs for interconnections.² Specifically, in its Attachment C-1 HQT states:

The transfer capability of a neighboring system has an impact on the amount of power that can be transferred over interconnections. Except for interconnection facilities jointly owned by the Transmission provider and neighboring system's transmission provider, parameters outside the Transmission Provider control (facility outages, system operating

¹ Proposed Hydro-Québec Open Access Transmission Tariff, HQT-4-01R.

² HQT, *Interconnection HQT-NE-HQT*, June 11, 2008 at Section 2.3 <http://www.transenergie.com/oasis/hqt/en/schemas.htmlx>.

conditions and limits) that affect the transfer capability of neighboring systems may be factored into the Transmission Provider TTC calculations.³

7. Mr. Hanser reviewed this language and approved of it. He stated:

I have reviewed TransÉnergie's Methodology for the calculations of ATC for interfaces with neighboring systems and I conclude that TransÉnergie has put into place a procedure to ensure that its ATC calculations are consistent with neighbouring systems' ratings.⁴

8. To justify its new Attachment C-1, HQT seems to rely on what I will refer to as the "890 Orders" issued by the U.S. Federal Energy Regulatory Commission (FERC).⁵ More precisely, HQT takes the position that the 890 Orders require that the calculation of ATC must take into account, when applicable, transmission constraints in neighboring areas.⁶ HQT refers to this as a requirement for "harmonization", a term of art which requires more explanation.

³ Proposed Hydro-Québec Open Access Transmission Tariff, HQT-4-01R at Original Sheet No. 202.

⁴ *Expert Report of Philip Q Hanser, On behalf of Hydro-Québec TransÉnergie*, R-3669-2008 Phase 2, June 2010 ("Hanser") at ¶5.

⁵ *Hanser* at ¶5. The 890 Orders are as follows: *Preventing Undue Discrimination and Preference in Transmission Service (Order No. 890)*, FERC Docket Nos. RM05-17-000 and RM05-25-000, February 16, 2007; *Preventing Undue Discrimination and Preference in Transmission Service (Order No. 890-A)*, FERC Docket Nos. RM05-17-001 and 002, RM05-25-001 and 002, December 28, 2007; *Preventing Undue Discrimination and Preference in Transmission Service (Order No. 890-B)*, FERC Docket Nos. RM05-17-003 and RM05-25-003, June 23, 2008; *Preventing Undue Discrimination and Preference in Transmission Service (Order No. 890-C)*, FERC Docket Nos. RM05-17-004 and RM05-25-004, March 19, 2009; *Preventing Undue Discrimination and Preference in Transmission Service (Order No. 890-D)*, FERC Docket Nos. RM05-17-005 and RM05-25-005, November 19, 2009.

⁶ *Hanser* at ¶5.

9. In essence, HQT states that harmonization requires that it sets the ATC for firm service on an intertie to the “lowest common denominator.” – in effect, the lowest ATC set on either side of an intertie.⁷ For example, on the Hydro Québec – New England Intertie, HQT claims harmonization requires that the ATC for firm service be lowered from a nominal 2,000 MW to 1,200 MW.⁸ Further, and equally important, HQT chose an allocation methodology that results in all of the remaining 1,200 MW of ATC on this Intertie being allocated to its affiliate who buys and sells power in U.S. wholesale markets.
10. To illustrate the impact of HQT’s proposed approach to harmonization, note that my client, Énergie Brookfield Marketing Inc., (EBMI) holds Transmission Service Agreements with HQT for 306 MW of Long-Term Firm Point-to-Point Transmission service on the Canadian segment of the Québec-New England Intertie termed Phase I/II HVDC-TF or, herein, the Intertie. In addition to the HQT service, EBMI also has secured commensurate firm transmission service on the U.S. segment of the Phase I/II HVDC-TF for 282 MW.⁹ EBMI uses these transmission service agreements in combination to reliably enter into and fulfill power sales contracts that it secures with electricity buyers in New England and elsewhere in the Northeast United

⁷ Ibid., at ¶ 17-18.

⁸ *Complaint against Hydro-Québec in respect of its electricity transmission activities and application for a safeguard order to protect the rights of the plaintiff, Énergie Brookfield Marketing Inc.*, March 14, 2010 (“*March 14 Complaint*”) at Exhibit EBMI-15 in March 14, 2010 Complaint.

⁹ *March 14 Complaint* at page 11 and Exhibit EBMI-20 in March 14, 2010 Complaint.

States.¹⁰ The Service Agreements with HQT were made under HQT's Open Access Transmission Tariff (Tariff) and were all entered into prior to HQT's attempted harmonization.

11. HQT informed EBMI in early 2010 that it will not honor the rollover rights in these service agreements¹¹ – that is, HQT has refused to renew these service agreements as required under its existing Tariff. The basis for HQT's refusal is the reduction in ATC resulting from HQT's chosen approach to harmonization. EBMI filed complaints against HQT before the Régie de l'énergie (Régie) on March 14, 2010 (P-130-001) and on June 8, 2010 (P-130-003).¹² I submitted an Expert Report in those Complaint proceedings and testified at the trial.¹³

2. Summary

12. A crucial threshold issue is whether HQT must gain the Régie's prior approval to define and to implement its harmonization proposal. HQT's actions are contradictory in this regard. On the one hand, HQT has already implemented harmonization in the specific instances in which it denied EBMI's contractual right to renew its transmission service agreements. On

¹⁰ *March 14 Complaint* at page 11.

¹¹ *Ibid.*, at page 7.

¹² *Complaints against Hydro-Québec in respect of its electricity transmission activities and application for a safeguard order to protect the rights of the plaintiff, Énergie Brookfield Marketing Inc.*, March 14, 2010 and June 8, 2010, ("*March 14 Complaint*" and "*June 8 Complaint*").

¹³ *Expert Report of Craig R. Roach, Ph.D., on Behalf of Énergie Brookfield Marketing Inc.*, P-130-001 and P-130-003, July 30, 2010.

the other hand, HQT has come to this Rate Case proceeding asking for the Régie's approval for its modified OATT including the newly proposed Attachment C-1.

13. My view is that with respect to the Québec-New England Intertie, HQT should have gained Régie approval to define and to implement its proposed harmonization. I say this because harmonization is such a substantial change to HQT's OATT and because it could do such substantial harm to competitors of HQ and its affiliates. HQT's decision to implement its proposed harmonization is not appropriate. Indeed, rather than furthering the goals of the 890 Orders, HQT's implementation would seem to go against those goals. That is, HQT's failure to fully explain and justify its harmonization proposal would be more likely to raise concerns about undue discrimination than to mitigate such concerns.

14. To justify the proposed harmonization, HQT should have created a full record in this Rate Case which (a) states the purpose of harmonization and demonstrates that this purpose is served by HQT's chosen approach, (b) justifies the level of ATC required by harmonization, (c) justifies the allocation of the remaining ATC, and (d) demonstrates HQT's allocation is consistent with all the other rights and obligations under the Tariff – Sections 2.2 and 13.6 in particular.

15. As to the purpose for a harmonization proposal, I agree that FERC's 890 Orders require that the ATCs on two sides of an interconnection must be consistent – although FERC made it clear that it did not mean identical.¹⁴ So I agree that, at some point, there is a need for something like a harmonization plan. However, the “consistency” should serve some purpose. For example, HQT has not shown its proposed reduction in ATC on the Québec-New England Intertie is necessary to address a reliability concern or to reduce congestion or to alleviate undue discrimination. Put simply, HQT has proposed a “solution”, but has not stated the problem it intends to solve.

16. HQT's action does not appear to have been coordinated with its neighbors on the New England side of the Intertie. HQT decided to cut ATC to 1,200 MW on the Canadian side of the Intertie. In sharp contrast, an ISO New England document dated August 30, 2010, stated:

The Phase I/II HVDC-TF is a controllable DC inter-Control Area tie line. Therefore it is not necessary to coordinate the Phase I/II HVDC-TF ATC values with the Hydro-Québec Control Area.¹⁵

17. As to the level of ATC, also relevant is the fact that there has been debate in the past on what the New England side limit for firm transmission service should be. For example, a 2007 briefing by ISO New England suggested that the transfer limit along this Intertie should be 1,400 MW for purposes of ISO

¹⁴ *Order No. 890-C* at ¶9.

¹⁵ *ISO New England Inc. Transmission, Markets and Services Tariff, Schedule 20A Point-to-Point Service over the Phase I/II HVDC Transmission Facilities (Phase I/II HVDC-TF Service) (“Schedule 20A”)* at page 44.

New England's capacity requirements.¹⁶ At a minimum, HQT should provide a full, quantitative account of the experience with schedules and power flows on the Intertie to support the level it chooses for ATC. Further, since a firm ATC greater than 1,200 MW could be beneficial to both Québec and New England, HQT should explore with its neighbors the chances of an agreement on a higher level of ATC.

18. As to allocation of ATC, HQT has failed to justify the specifics of its proposal. To provide such a justification for the specifics, HQT would have to provide its analysis of alternative methods of allocation. Further, HQT would have to evaluate the alternatives based on principles such as economic efficiency, fairness, and consistency with other contractual requirements in its OATT. HQT has simply failed to provide the Régie with the necessary record. It has neither identified alternatives nor evaluated alternatives based on a reasonable set of principles.

19. It would not be sufficient for the Régie to approve amendments like C-1; the Régie also should assess the impact of those amendments on transmission customers and determine how to approach any ATC reduction. As to the right approach to the allocation of any ATC reduction, I discuss two alternatives. The first is that the Régie certainly could rule that a *pro rata* allocation is

¹⁶ *Hydro-Québec Phase II Interconnection Total Transfer Capability Assumption for Determining New England Installed Capacity Requirements for 2010/11, ("2007 ISO-NE Briefing")* Peter Wong, ISO New England Power Supply Planning Committee Meeting, April 19, 2007, page 8.

required to be consistent with sections 2.2 and 13.6 of the HQT OATT. The appeal of this method comes from the fact that it is consistent with important rights elsewhere in the HQT OATT; note, too, that these rights are supported by substantial FERC precedents which require *pro rata* allocation when ATC is no longer sufficient to serve all existing firm transmission customers.

20. FERC precedents also show a close tie between rollover rights and the requirement for *pro rata* allocation. The link is that, under its Tariff, HQT cannot deny a request for a rollover under Section 2.2 because of a reduction in ATC. That is, if, as HQT claims, after harmonization there is no longer sufficient ATC to serve all existing firm transmission customers on the Intertie, HQT's options are to either curtail all existing customers or to build more transmission capability. And, if curtailment is the chosen option, Section 13.6 of the Tariff dictates that the curtailment must be done on a *pro rata* basis.

21. In the Complaint Case HQT has refused to grant rollover rights and a *pro rata* allocation since it equates a rollover request from an *existing* customer like EBMI to a request for transmission service from a *new* customer.¹⁷ The FERC has addressed this issue on many occasions and has consistently ruled that a rollover request is not the same as a new request. FERC's purpose in providing rollover rights in its *pro forma* Tariff is to give equal treatment to

¹⁷ *March 14 Complaint* at page 10.

all existing long-term firm transmission customers by giving them priority over new customers. That is, to prevent undue discrimination, once a customer has been granted such firm transmission service, it is put on an equal footing with all other existing long-term firm transmission customers – including most notably the transmission provider’s affiliates.

22. However, there are options other than pro rata allocation that the Régie could consider in this Rate Case. For example, the second alternative I discuss starts with HQT’s argument that the only way to harmonize is for HQT to set the level of firm ATC on the Canadian segment of the Intertie equal in total to that on the New England segment of the Intertie – HQT says this is 1,200 MW. Consistent with this, it seems obvious that the allocation of the total firm ATC on the Canadian segment should also match that on the New England segment; put simply, for example, EBMI has secured 282 MW of firm transmission service on the New England segment so it should be allocated 282 MW on the Canadian segment. This is fair in the sense that the remaining ATC goes to the transmission customers who have gone to the expense of buying firm transmission on both segments. And it is economically efficient because it would mean that customers have firm transmission on the full trip to New England rather than having an ineffective mix of firm and non-firm service. To draw an analogy, having a non-firm segment would be like flying standby on one leg of a flight – the standby leg would undermine the value of the full-fare leg.

23. The bottom line is that the Régie should reject HQT's approach to harmonization and determine an approach which is non-discriminatory, economically efficient, fair, and consistent with other provisions of the Tariff. Specifically, I submit that Régie should reject HQT's harmonization plan if it leads to an approach to allocation that (a) violates Section 2.2 of the Tariff by wrongfully denying EBMI's rollover request and (b) violates Section 13.6 of the Tariff by failing to propose *pro rata* curtailment for all long-term firm customers to accommodate any reduction in ATC.

24. It is important to see that these concerns about determining the right level and allocation of ATC are not motivated by abstract OATT concepts, but, rather, they are motivated by the fact that HQT's actions can cause commercial and anticompetitive harm to existing firm transmission customers. The commercial harm comes because these customers have or will secure contracts to deliver electric energy and other products to customers in the Northeast U.S. and there are penalties and possible defaults if it does not live up to those contracts. The anticompetitive harm comes because HQT's affiliate and the transmission customers are competitors in selling renewable power from Canada into the U.S.; if only for transparency and undue discrimination concerns, it cannot appear that HQT can simply push aside a competitor and harm its reputation.

25. Finally, HQT makes a change to Section 2.2 which is not required by the 890 Orders. HQT strikes the word “new” before “Eligible Customer”. The Régie should require HQT to explain its intent with and the impact of this change.

B. Evidence

1. What is the purpose of harmonization?

26. As already explained in the Summary above, I find that HQT did not give the Régie the full record it needs to approve the Tariff changes and the harmonization plan HQT proposes. HQT failed to provide the necessary, full record because it failed to address the right issues. The four issues are: (a) What is the purpose of harmonization and how does HQT’s chosen approach serve that purpose? (b) What is the right level of ATC required by harmonization? (c) What is the right allocation of the ATC which remains after harmonization? and (d) Is HQT’s chosen approach to allocation consistent with the other rights and obligations under the Tariff?
27. As to the purpose of harmonization, I agree that the FERC 890 Orders require “consistent” ATCs on the two sides of an interconnection. One central theme in the FERC 890 orders is the required exchange of information among transmission providers to achieve accurate ATC calculations. For example, in Order No. 890-A, FERC affirmed that data must be exchanged between neighboring transmission systems and that the ATC values calculated should be consistent across systems. FERC states that, in order to calculate accurate

ATC values, conditions on adjacent transmission systems must be accounted for. FERC stated the following:

[W]e clarify that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface. This is applicable to any neighboring transmission providers no matter whether they use the same or different ATC methodologies.¹⁸

28. On June 23, 2008, FERC issued Order 890-B to provide further clarification in response to intervenor comments. One of the issues that FERC discusses in detail is “consistency and transparency of ATC Calculations.” First, FERC reemphasizes its statements provided in Order 890-A, and even seems to go a step further by defining “*consistent* ATC values” as being “*identical* ATC values.”

The Commission affirms the clarification provided in Order No. 890-A that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface. We disagree with petitioners arguing that “consistent” ATC values should not be interpreted as identical.¹⁹

29. However, there was substantial push back by intervenors on the use of the word identical and in response to intervenors’ assertions that having identical ATC values on either side of a single interface is “not reasonably achievable”, FERC went on to say:

¹⁸ Order No. 890-A at ¶52.

¹⁹ Order No. 890-B at ¶15.

We recognize that factors such as timing of reservation requests, acceptances, and confirmations, and multiple interfaces between and among transmission providers, can make it difficult to achieve coincidental, identical postings of ATC values on both sides of an interface. However, as the Commission explained in Order No. 890, if all of the ATC components and certain data inputs and assumptions are consistent, the ATC calculation methodologies being finalized by NERC through the reliability standards development process should produce predictable and sufficiently accurate, consistent, equivalent, and replicable results. We therefore disagree that the directive to coordinate and exchange data and assumptions to achieve consistent ATC values on either side of an interface was newly imposed in Order No. 890-A. The Commission simply clarified that the requirement stated in Order No. 890 applies equally to calculations of ATC on either side of an interface.²⁰

The language which is repeated here suggests that the results of any ATC calculation should, on either side of a seam, be “accurate, consistent, equivalent, and replicable.”

30. In Order 890-C FERC further clarified the statement that it made in 890-B:

The requirement, then, is not to achieve identical postings of ATC values on either side of an interface, as NorthWestern contends. The requirement 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.²¹

31. I take special note that FERC is saying that the path to achieving the consistency that it wants requires substantial information exchange by the

²⁰ Ibid.

²¹ *Order No. 890-C* at ¶9.

neighboring transmission systems. If such an information exchange took place, then HQT should make it part of the record. However, we cannot find any evidence filed by HQT in this proceeding that such an exchange took place or that “consistency” was discussed in any depth. Take for example the major Québec-New England Intertie. HQT has determined that, to be “consistent”, it must set the ATC on the Canadian side of this Intertie equal to the ATC on the American side. HQT has not achieved a formal agreement on this with the ISO New England. As already quoted in the Summary, an ISO New England document dated August 30, 2010 stated that there was no need to coordinate ATCs on the Québec-New England Intertie. Specifically, the document said:

Coordinating ATC Calculations

The Phase I/II HVDC-TF is a controllable DC inter-Control Area tie line. Therefore it is not necessary to coordinate the Phase I/II HVDC-TF ATC values with the Hydro-Québec Control Area.²²

32. All I have is this quote and I do not want to read too much into a single sentence. One interpretation is that ISO New England sees no need for harmonization on this Intertie because there has been an inconsistency in ATCs on the two segments of the Intertie for many years. Further, ISO New England points to the fact that this is a “controllable DC” line, indicating the direct current (DC) flow would have to be deliberately converted to

²² *Schedule 20A* at page 44.

alternating current (AC) to impact the broader ISO New England AC system.

Perhaps this is a call to keep things as they are.

33. This leads me to ask a common sense question – what is the purpose of the consistency HQT wants to achieve and how does HQT’s approach to harmonization serve that purpose? HQT has not defined a reliability or congestion or discrimination problem. In sum, HQT fails to state the problem its harmonization solution is intended to solve.

2. What is the right level of ATC after harmonization?

34. As to the level of ATC, it seems that HQT believes the reduction in firm ATC on one or more Interties is necessary to comply with new rules from the U.S. FERC as stated in its 890 Orders. HQT reads the relevant sections to require that transmission constraints in neighboring areas must be taken into account when determining the firm ATC on the Intertie. I agree that, at some point, the level of firm transmission service on the Canadian and U.S. segments of the Intertie should be made consistent (not necessarily identical) as required by the 890 Orders. However, HQT must establish a full record to support a particular level of ATC.

35. For example, the amount of firm transmission service that is made available on the New England segment of the Intertie is limited to 1,200 MW, 800 MW

below the full capability of the line.²³ As explained in filings to FERC, the reason for this limit is that the Intertie can become the largest contingency in the NYISO, PJM, and/or New England regions if it exceeds a firm ATC of 1,200 MW.²⁴

36. Before HQT can implement any harmonization it should create a record which supports the extent of any reduction it proposes in firm transmission service on any intertie. As a start, HQT should provide an hourly record of the historical operating experience on the intertie. For example, with the Québec – New England Intertie, how much firm transmission service has been sold on both the Canadian and U.S. segments of the Intertie, and to whom? How often has this service been curtailed and for what reasons?

37. Further, HQT should explain why it seems that ISO New England, as documented earlier, does not believe the ATC, on the Canadian and the U.S. section of the Intertie must be “coordinated”.

38. HQT should also take account of the fact that there seems to be some differences of opinion on the right level of firm ATC on the New England segment of the Intertie. In 2007, for example, a case was made by ISO New

²³ *ISO New England Calculation of TTC for External Interfaces and ATC for PTF Interfaces, Version 3.1*, March 27, 2009 (“*ISO-NE Calculation*”).

²⁴ *Ibid.*, at page 15 and *Procedure to Protect for the Loss of Phase II Imports*, FERC Docket No. ER07-231-000, November 16, 2006 at page 4.

England that the transfer limit should be 1,400 MW for purposes of its capacity requirements. ISO New England stated:

ISO New England proposes a Hydro-Quebec Phase II Transmission Facility Transfer Capability of 1,400 MW for use in all studies relating to the development of the Installed Capacity Requirements for the 2010/2011 Power Year.²⁵

This is not to suggest that this one document is enough to support a 1,400 MW firm ATC, but, rather, that the record has to be developed before the Régie can be asked to make its decision. Since a higher firm ATC is in everyone's interest, suppliers and consumers alike, this is a record worth having.

39. HQT's expert on its proposed ATC calculation methodology, Mr. Hanser, does not address these implementation issues. He only addresses at a general level the concept of the new Attachment C-1. Again, I will offer the opinion that it is not sufficient for the Régie to approve amendments like C-1; the Régie should also assess the impact of those amendments on transmission customers and determine how to address ATC reduction.

3. What is the right allocation of the ATC?

40. I turn now to the third and fourth of the four questions HQT has failed to address. The third question is what is the right allocation of the ATC which

²⁵ 2007 ISO-NE Briefing at page 8.

remains after harmonization? The fourth (and closely related) question is what approach to allocation is consistent with the other terms of the Tariff? These two questions need to be answered simultaneously. To that end, consideration of Section 2.2 (which covers rollover rights) and Section 13.6 (which prescribes an approach to curtailment) are key to a choice of allocation methods. Finally, I illustrate the potential for innovative allocations of ATC in a final section under this heading.

a) Rollover rights under Section 2.2

41. HQT's mistaken interpretation of rollover rights under section 2.2 of its OATT, as explained above, is one important reason the Régie should reject HQT's approach to allocating ATC after harmonization. For that reason, this section goes into considerable detail on the FERC's rulings on rollover rights, in general and in cases of a reduced ATC, in particular.

42. Again, as background, note that EBMI has four executed Long-Term Firm Point-to-Point Transmission Service Agreements with HQT on Phase I/II HVDC-TF. EBMI and HQT executed two agreements for a net total of 106 MW on the MATI/HQT/NE path with service that started on April 1, 2007, and executed two additional agreements for a net 200 MW on the ON/HQT/NE path with service to start June 1, 2009.²⁶ Importantly, all of

²⁶ *March 14 Complaint* at pages 1 to 5 and *March 14 Complaint Exhibits* 1, 2, 6, and 7.

these transmission agreements were completed pursuant to the terms and conditions of the HQT Tariff in force at the time of execution.

43. EBMI has renewal rights under its service agreements pursuant to Section 2.2 in both the current and proposed OATT. As stated in the proposed Tariff at Section 2.2 in part:

Existing firm transmission service customers with a contract term of five years or more have the right to continue to use the Transmission Provider's Transmission Service when their contract expires, rolls over or is renewed..... This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contracts of five years or longer.²⁷

By denying EBMI's rollover request, HQT has simply refused to comply with the terms of the Service Agreements and its Tariff. Note that HQT's Section 2.2 is modeled after FERC's standard OATT. The proposed change to Section 2.2 concerning the term of the contract (one year to five years) does not change the nature of the rollover right.

44. In its response to the Complaint, HQT makes several assertions in rebuttal to EBMI which attempt to diminish the rollover rights in its Tariff and, thereby, to justify its denial of EBMI's rollover request. First, in response to EBMI's point that Section 2.2 means it has a "right" to rollover, HQT responded by saying "the OATT makes no mention whatsoever of acquired rights

²⁷ Proposed Hydro-Québec Open Access Transmission Tariff, HQT-4-01R at Section 2.2.

attributable to EBMI.”²⁸ Second, HQT asserts a rollover request “is considered a new request or transmission contract, as stated in OATT Section 2.2.”²⁹ Third, HQT implies that EBMI has a “reservation priority” only when there is a competing request for service – this implies Section 2.2 is only meant as a tie-breaker provision.³⁰ Fourth, HQT asserts that deficient ATC is justification for denying renewals.

45. FERC established the right to renew or rollover long-term firm transmission service in its original open access order in 1996 (Order 888) and FERC has addressed the assertions made by HQT at several points since then. One instructive, on-point case precedent from FERC is the Exelon Generation Company, LLC v. Southwest Power Pool case. In this case, Exelon filed a Complaint after SPP refused to honor Exelon’s rollover rights related to its one-year, long-term firm, point-to-point transmission service agreement. As is asserted by HQT, the reason given by SPP for its refusal to grant the rollover request was that there was no longer sufficient transmission capacity available on the SPP system. As a result of this Complaint FERC issued two orders; an Order granting Exelon’s Complaint (Order Granting Complaint) and an Order denying SPP’s request for rehearing (Order Denying

²⁸ *Hydro-Québec response to February 25, 2010 Complaint from Énergie Brookfield Marketing Inc.*, (“*Hydro-Québec Response*”), March 11, 2010 at page 4.

²⁹ *Ibid.*

³⁰ *Ibid.*

Rehearing).³¹ Since FERC did not make significant changes in this regard to Section 2.2 with its 890 Orders, this case precedent is still very much on point.

46. In these two Orders, FERC makes most if not all of the points about rollover rights needed to rebut HQT's assertions. In summary, FERC finds that: (a) long-term firm transmission customers do have a *right* to renew or rollover their transmission agreements under Section 2.2 of the OATT, (b) *rollover* requests should not be treated as *new* requests for transmission service, (c) the purpose of rollover rights is not simply to provide a tiebreaking mechanism, but also to allow existing customers to continue to take service, (d) rollover rights can only be limited when a rollover customer fails to match a competing request or there are limitations spelled out in the original service agreement, (e) a reduction in ATC is not a reason to refuse a rollover request, and (f) further, if there is a reduction in ATC, a Transmission Provider must either curtail service according to its OATT or build new transmission facilities.

47. FERC makes it clear in this case precedent that transmission customers with long-term, firm, point-to-point transmission service agreements do have a right, under Section 2.2 of the OATT, to continue to take service from the

³¹ Federal Energy Regulatory Commission, *Exelon Generation Company, LLC v. Southwest Power Pool, Inc., Order Granting Complaint*, Docket No. EL02-86-000, Issued May 31, 2002 and Federal Energy Regulatory Commission, *Exelon Generation Company, LLC v. Southwest Power Pool, Inc., Order Denying Rehearing*, Docket No. EL02-86-001, Issued November 22, 2002.

transmission provider by rolling over or renewing their agreements. In ¶25 of the Order Granting Complaint, FERC states:

The Commission has consistently held that under Section 2.2, all firm transmission customers (requirements and transmission-only), upon the expiration of their contracts or at the time their contracts become subject to renewal or rollover, **have a right to** continue to take transmission service from their existing transmission provider. [Emphasis Added]

FERC reiterates this point in its Order Denying Rehearing at ¶3:

In the May Order, the Commission granted Exelon's complaint and stated that Exelon **has the right** to request a rollover of its existing firm point-to-point transmission service. The May Order explained that SPP is obligated, under Section 2.2 of its OATT (which adopts the language of the Commission's pro forma OATT), to maintain available transmission capacity for its existing long-term transmission customers with rollover rights, such as Exelon, until the time expires for those customers to exercise their rollover rights. [Emphasis Added]

And in ¶15 of the Order Denying Rehearing, FERC states that the intent of rollover rights was to allow long-term customers the right to continue taking service.

Indeed, it was the intent of the Commission in establishing the rollover policy that long-term customers have **the right** to continue to take service and, accordingly, that the transmission provider be in the position of continuing to provide it. [Emphasis Added]

48. Much like HQT, SPP also tried to make the argument that a *renewal* request should be treated as a *new* request under the OATT. However, FERC dismissed this idea in its Order Denying Rehearing at ¶39.

In Entergy, when we stated that "[b]y exercising a right of first refusal an existing transmission customer is, in effect, arranging a new long-term firm point-to-point transmission service," we did not mean that the rollover request was to be treated as a new long-term request for service for purposes of a new determination of available transmission capacity under Section 17.5 or a new system impact study.

Further in ¶40, FERC states that such an interpretation of the OATT would undermine the entire FERC rollover policy.

We did not intend to suggest or imply that a transmission provider would make a determination of available transmission capacity or perform a new system impact study each time that a long-term firm transmission customer elects to roll over its existing transmission service, and SPP's arguments to the contrary are wrong. Indeed, such an interpretation would effectively undermine the entire rollover rights policy established in Order No. 888 and set forth in Section 2.2 of the pro forma OATT.

49. FERC also refutes the notion that the sole purpose of Section 2.2 and rollover rights is to provide a tiebreaking procedure when there is not sufficient ATC to accommodate all requests. While this is one purpose, FERC notes that, more importantly, rollover rights allow existing customers to continue taking service from the transmission provider. In ¶34 of the Order Denying Rehearing, FERC states:

Once again, SPP has misconstrued our previous orders. While it is true, as SPP suggests, that Section 2.2 can serve as a tie-breaking mechanism, that provision is not intended to function only as a tie-breaker. In other words, the rollover rights policy is not intended to apply only when there are competing and substantially similar firm service requests. As we have explained in previous orders, Section 2.2 provides a tie-breaking mechanism when a transmission provider has insufficient transmission capacity and there are competing requests for that available capacity, including an existing long-term firm transmission customer whose

transmission service agreement is up for renewal or rollover. If the transmission provider has insufficient capacity, then Section 2.2 provides a tie-breaker mechanism that gives the transmission customer the right of first refusal. However, in the absence of a competing request for service, the transmission provider is obligated under Section 2.2 to grant a request for rollover by an existing long-term transmission customer (assuming that the transmission agreement contains no restrictions on rollover rights, as discussed above).

50. FERC also discusses the specific instances when a customer's rollover rights may be limited. First, rollover rights can be limited in the sense that an existing, long-term customer must match the term and rate of a competing request. In its Order Granting Complaint at ¶ 25, FERC states:

The underlying contract must have been for a term of one-year or more (i.e., be a long-term contract) and the existing transmission customer must agree to match the rate offered by another potential transmission customer (up to the transmission provider's maximum filed rate at that time) and to accept a contract term at least as long as that offered by the potential customer (sometimes referred to as the right of first refusal).

Second, FERC states that any limitations on rollover must be spelled out in the original service agreement and can only be included for a very limited number of reasons. In ¶28 of the Order Granting Complaint, FERC states:

The Commission has consistently reaffirmed this policy, stating that a transmission provider can deny a customer the ability to rollover its long-term firm service contract only if the transmission provider includes in the original service agreement specific, reasonably forecasted native load needs that will use the transmission capacity provided under the contract at the end of the contract term. Any limitations to the rollover rights must be clearly stated in the customer's service agreement. Because the service agreement at issue here contains no such limitations on Exelon's rollover rights, Section 2.2 of the SPP OATT controls.

51. Finally, and importantly, FERC's decision in the Exelon v. SPP case makes it clear that a reduction in ATC is not one of the reasons a rollover right can be limited. In ¶26 of the Order Granting Complaint, FERC states:

SPP maintains that it is unable to provide the requested service due to changes to existing firm uses on its system including native load growth, changes in external trading patterns, generation dispatch modeling assumptions, and loop flow changes. SPP's arguments in this regard are not sufficient to override Exelon's rollover rights under Section 2.2 of the SPP OATT. Under Section 2.2, SPP is obligated to maintain available transmission capacity for its existing long-term transmission customers with rollover rights, such as Exelon, until the time expires for those customers to exercise their rollover rights.

Furthermore, FERC explains in ¶14 of the Order Denying Rehearing that if there is a reduction in ATC, it is the transmission provider's obligation to either build new facilities or curtail pursuant to its OATT.

A transmission provider is expected to include all long-term transmission customers (i.e., those with rollover rights) in its long-term planning. While it may be the case, as SPP suggests, that subsequent circumstances may negatively impact a transmission provider's available transmission capacity, the presence of such constraints do not give a transmission provider the right to deny a rollover request. Under Section 2.2 of its OATT, SPP is responsible for maintaining available transmission capacity for existing long-term transmission customers with rollover rights, such as Exelon, until the time expires for those customers to exercise their rollover rights. Thus, the constraints that SPP cites are not sufficient to override Exelon's rollover rights. If constraints arise after a transmission provider enters into a long-term agreement with a transmission customer (and that agreement contains no restrictions on the transmission customer's rollover rights), **the obligation is on the transmission provider to either build additional transmission facilities to relieve the constraint or to implement the curtailment procedures set forth in its OATT.** [Emphasis Added]

FERC reiterates this point in ¶21 of the Order Denying Rehearing:

As we have indicated above, if constraints arise after a transmission provider enters into a long-term agreement with a transmission customer (and that agreement contains no restrictions on the transmission customer's rollover rights), the obligation is on the transmission provider to determine whether or not to build additional facilities to accommodate new transmission customers. If the transmission system is constrained to the extent that the transmission provider cannot satisfy its existing transmission customers' contracts, then the transmission provider has the choice of either implementing the curtailment procedures set forth in its OATT or building additional transmission facilities to relieve the constraint.

52. While I quote extensively from this one case precedent, FERC has made the same points at other times over the fourteen-year period since its first open access order. For example, in its original open access order, Order 888, at page 88, FERC made it clear that an existing customer has the right to continue taking service with a renewal or rollover:

A further issue concerning firm contract customers is their right to transmission capacity (and the rate for such capacity) when their contracts expire by their own terms or become subject to renewal or rollover. We have concluded that all firm transmission customers (requirements and transmission-only), upon the expiration of their contracts or at the time their contracts become subject to renewal or rollover, **should have the right** to continue to take transmission service from their existing transmission provider. [Emphasis Added]

53. FERC continued to protect rollover rights in its most recent open access order – the 890 Orders. Here FERC makes it clear once again that, if there are to be any restrictions on rollover rights, they can be for only a very limited list of reasons and, equally important, those restrictions must be announced at the

time the service agreement is first executed. In Order 890A at ¶679, FERC stated:

We reject the argument of South Carolina E&G and South Carolina Regulatory Staff that the Commission should expand the ability of transmission providers to restrict rollover rights by, for example, allowing rollover restrictions to be added at the time of each rollover (rather than only at the initiation of service) or when the need for new facilities arises. We continue to believe that requiring transmission providers to determine at the initiation of service whether they have a reasonably forecasted native load growth need for the capacity strikes a reasonable balance between the transmission provider's needs and those of its customers seeking long-term transmission service with a rollover right. If we were to allow the transmission provider the ability to seek to restrict a rollover at the time of each rollover, as suggested by South Carolina E&G, it would vitiate the benefit of the rollover right to transmission customers, many of which also have load-serving obligations.

54. Finally, in Order 890 at ¶1215, FERC reiterated that, if the transmission provider no longer has the available capacity to serve all existing transmission customers including rollover customers, – as asserted by HQT – the transmission provider only has two options – curtail all existing customers or build new transmission facilities.

Once a transmission provider evaluates the impact on its system of serving a long-term firm transmission customer and grants the transmission customer existing capacity, the transmission provider must plan and operate its system with the expectation that it will continue to provide service to the transmission customer should the transmission customer exercise the right of first refusal. If constraints arise after a transmission provider enters into a long-term agreement with the transmission customer (and that agreement does not contain an allowed restriction on the transmission customer's right of first refusal), the obligation is on the transmission provider to either curtail service to all affected customers or build more capacity to relieve the constraint. A transmission provider is obligated to curtail service pursuant to its OATT or expand its system when its system becomes constrained such that it cannot satisfy existing

transmission customers, including the exercise of their rollover rights, because it should have planned and operated its system with the expectation that each long-term firm transmission customer will exercise its rollover rights.

b) Curtailment under Section 13.6

55. As indicated above, the Régie should consider the impact of any reduction in ATC. If there is a substantial reduction in firm ATC as asserted by HQT, what approach to curtailment is prescribed under the Tariff? In other words, how should we go about allocating the remaining firm ATC to existing customers?

56. The Tariff addresses what to do in the case of a reduction in firm ATC. In Section 13.6, the Tariff calls for a *pro rata* curtailment of all firm customers including firm point-to-point customers. So, if a firm transmission customer currently has 30% of the total firm service being sold today, that customer would get 30% of the firm transmission service which remains after the reduction. Section 13.6 states in part:

13.6 Curtailment of Firm Transmission Service: In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system, Curtailments shall be made on a non-discriminatory basis to the transactions that effectively relieve the constraint. If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, Curtailments shall be proportionally allocated among Native-Load Customers, Network Customers and Transmission Customers taking Firm Point-to-Point Transmission Service.

57. The FERC ruling in the ConocoPhillips v. Entergy Services Complaint also supports using *pro rata* curtailment as the method for allocating transmission capacity after a reduction in firm ATC.³² Furthermore, FERC ruled that the reverse queue method actually employed by Entergy and Entergy's Independent Coordinator of Transmission (ICT) was not consistent with its OATT.

58. Before providing specific FERC quotes, some background on the Complaint is necessary. In this case, ConocoPhillips submitted two requests for short-term firm point-to-point service on Entergy's system, which were subsequently approved by Entergy and confirmed. After Entergy realized that it had actually oversold capacity on the flowgate as a result of miscalculating the available capability due to a software error, the ICT notified transmission customers that, if no transmission customer voluntarily terminated its service, the ICT would terminate transmission service in reverse queue order. After there were no volunteers, the ICT terminated ConocoPhillips' two transmission agreements, which led to ConocoPhillips' Complaint and FERC's Order in response.

³² Federal Energy Regulatory Commission, ConocoPhillips Company v. Entergy Services, Inc., *Order on Complaint*, Docket No. EL08-59-000, Issued July 24, 2008.

59. As mentioned above, FERC determined that Entergy and the ICT's method of allocating firm ATC by reverse queue order was not consistent with its

OATT. FERC states at ¶23:

The termination of ConocoPhillips' June and July Transactions was not consistent with Entergy's OATT, specifically the procedures established in Entergy's OATT for relieving a system constraint.

60. FERC stated, in ¶24, that Entergy and the ICT should have relied on *pro rata* curtailment under Section 13.6:

Although Entergy's OATT did not have a specific provision for terminating transactions due to software errors, section 13.6 (Curtailment of Firm Transmission Service) sets forth a procedure for making curtailments for system reliability. Absent a specific provision addressing software errors, section 13.6 is the appropriate OATT provision to which Entergy and the ICT should have looked for addressing the constraint.

61. To put a fine point on it, FERC also stated this in ¶27 – that, in the face of a transmission constraint, all existing customers must be curtailed on a *pro rata* basis under Section 13.6.

Entergy's argument that ConocoPhillips' requests would not have been accepted absent the software error has no bearing on our decision that Entergy and the ICT were obligated to follow Entergy's OATT once ConocoPhillips' request for service was confirmed. Once a constraint is identified, the OATT calls for curtailing all existing relevant reservations *pro rata*, pursuant to section 13.6. As we stated above, nothing in Entergy's OATT allowed termination of firm point-to-point service in reverse queue order.

62. Finally, FERC stated that treating some existing firm transmission reservations differently to other existing firm transmission reservations was

not only inconsistent with the Tariff but also unduly discriminatory. In ¶26,

FERC states:

Relieving the system constraints through termination of reservations in the reverse order that the requests were accepted did not comply with section 13.6, and placed the entire burden of relieving the constraint on ConocoPhillips and the other last-in-queue firm-service customers. This unduly discriminated between customers even though they were similarly situated, each having confirmed firm service, and such action was unsupported by Entergy's OATT.

c) An alternative approach to allocation of ATC

63. In sum, what I intended to show so far in my testimony is that HQT's proposed approach to allocation of ATC after harmonization violated its Tariff. HQT has failed to comply with Section 2.2 of its Tariff because it wrongfully denied EBMI its rollover rights as explained in the Complaint. HQT has failed to comply with Section 13.6 of its Tariff because, in the face of an asserted insufficiency of ATC, HQT failed to propose a *pro rata* curtailment.
64. Given this, the Régie could stop right here on its decision on the right way to allocate the ATC which remains after harmonization. That is, the Régie could rule that a *pro rata* allocation of any reduction in ATC be made to existing, firm transmission customers on the Intertie.

65. However, the Régie should feel free to look for other approaches to allocation that are both fair and economically efficient. In effect, the Régie would make a one-time ruling because of the magnitude and significance of the proposed reduction in firm ATC.

66. An approach that I think meets both of these requirements – fairness and economic efficiency – is to allocate the remaining firm ATC on the Canadian segment in proportion to the share of firm transmission each customer has secured and paid for on the New England segment of the Intertie. For example, put simply, since EBMI has secured 306 MW of firm transmission service on the Canadian segment and 282 MW on the New England segment of the Phase I/II HVDC-TF, EBMI should be allocated approximately 282 MW of the firm ATC remaining after HQT's harmonization.

67. There are three reasons to support this approach to allocation. First, it is fair to allocate the remaining firm ATC to those who have gone to the expense of securing and paying for firm transmission service on the full length of the Intertie.

68. Second, it is economically efficient to do it that way, too. For example, assume HQT's affiliate has 1,200 MW of firm transmission on the HQT segment, but has only approximately 900 MW on the New England segment; this, in effect, wastes the value of 300 MW of firm transmission capacity. To

draw an analogy, it would be as if a businessperson, faced with attending an important meeting in Vancouver, bought a full-fare ticket for the first leg of the flight – say to Calgary – and then flew standby for the second leg from Calgary to Vancouver. This makes no sense – the standby leg completely undermines the value of paying full fare for the first leg because the businessperson cannot guarantee arrival at the meeting on time. Likewise, HQT’s affiliate having 1,200 MW of firm on the Québec segment of the Intertie, but only 900 MW on the New England segment, undermines the value of 300 MW out of the 1,200 MW of firm. To get the full value of the 1,200 MW of firm ATC, it is essential that the 1,200 MW be allocated to those who have firm on both segments of the Intertie.

69. Third, since HQT proposes to use the *level* of ATC (1,200 MW) set by New England, it would be consistent and, therefore, fair to adopt New England’s *allocation* of that firm ATC as well. Again, we know that EBMI has 282 MW of firm transmission service on the New England segment so EBMI should be allocated approximately 282 MW on the Canadian segment.

4. Potential commercial and anticompetitive harm

70. It is important to remind ourselves that these concerns about rollover rights and allocations are not motivated by an academic debate about open access tariff language. Rather, they are motivated by the fact that HQT’s position

can harm existing firm transmission customers in both commercial and anticompetitive terms.

71. Key to commercial harm is the fact that these customers may have signed and are in the business of signing sales contracts which obligate them to deliver electric energy and renewable energy certificates. It is common for such contracts to include commitments to deliver a certain number of MWh of energy each year. If the supplier fails to deliver that number of MWh on a rolling average basis, that supplier could be in default. Similarly, if a supplier fails to deliver energy or renewable energy certificates and, as a result, the buyer must buy replacement energy or renewable energy certificates at a price higher than the contract price, the supplier is liable for the increase in price.
72. As to anticompetitive harm, my concern is that HQT's attempt to implement harmonization, along with its proposed method of implementing harmonization, gives the appearance that HQT can undermine a commitment by a competitor at will. Specifically, existing firm transmission customers may have made contractual commitments to deliver electricity products over an intertie based on its securing firm transmission service on both segments of that intertie. Now, when the amount of firm transmission service is reduced, rather than sharing the reduction, HQT simply allocates 100% of what remains to its affiliate.

5. A case precedent from the British Columbia Utilities Commission

73. I was an expert in a recent case before the British Columbia Utilities

Commission that, while very different in its facts, involved some of the policy issues raised in this proceeding. Specifically, the British Columbia case involved the issue of setting ATC for the intertie between British Columbia and the neighboring province of Alberta.

74. Very briefly, the facts are that the ATC for the intertie had been set at 480

MW, although the intertie, physically, could transmit much more; the 480 MW ATC reflected the fact that transmission constraints in Alberta prohibited transfers much above this level. British Columbia Transmission Corporation (the equivalent of HQT) decided to increase the ATC to 785 MW and, later, sought approval for an ATC methodology which blocked the consideration of transmission constraints in neighboring systems.

75. The central question was whether BCTC had to take account of constraints in

neighboring areas because of the 890 Orders and other rules and precedents. Based on substantial FERC precedent, I argued that such constraints must be taken into account and that the ATC should be put back near the 480 MW level.

76. The British Columbia Utilities Commission agreed and ruled that the ATC

should be set at 480 MW. It then addressed the tough issue that is shared in

this proceeding – who bears the burden of the ATC reduction? Importantly, the British Columbia Utilities Commission allocated the ATC reduction in a manner consistent with FERC rulings in the rollover cases cited above.

Specifically, recall that FERC said that “Any limitations to the rollover rights must be clearly stated in the customer’s service agreement.”³³ As the British Columbia Utilities Commission explained, when the ATC was raised from 480 MW to 785 MW, the new contracts were explicitly conditioned upon a ruling approving the increase. The British Columbia Utilities Commission stated:

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.³⁴

77. What may be of most interest to the Régie is that, ultimately, all four of the crucial questions I defined earlier in this Report were addressed in the British

³³ *Order Granting Compliant* at ¶28.

³⁴ British Columbia Utilities Commission, Decision, *A Complaint by TransCanada Energy Ltd. Regarding the Service Agreement with British Columbia Transmission Corporation for Long Term Firm Point to Point Transmission Service (September 10, 2009)* (“BCUC Decision”) at page 45.

Columbia Order. First, as to the purpose of the harmonization plan, there was clear damage that had to be mitigated. When the Transmission Provider increased firm ATC from 480 MW to 785 MW all transmission customers were curtailed more often. The British Columbia Utilities Commission found that, to assure the same flow of power, firm transmission customers had to buy more firm capacity and, in this way, the actual price paid for transmission service “is above the stated price and not transparent.”³⁵ That is, unlike HQT’s proposal, harmonization in the British Columbia case was a focused solution to a defined problem.

Second, as to the level of ATC after harmonization, once the problem was defined – a problem of congestion and curtailment – the right level of ATC became apparent. Although the British Columbia Utilities Commission acknowledged that judgment had to be used, data on the portion of time firm service could be reasonably expected without curtailment led the British Columbia Utilities Commission back to 480 MW.³⁶

Third, as to the allocation of the remaining ATC after harmonization, as already noted, specific customers had been forewarned of the possibility of a

³⁵ *BCUC Decision* at page 35.

³⁶ *Ibid.*, at pages 24, 43, and 45.

reduction in ATC and those specific customers were the ones to whom the reduced ATC was allocated.³⁷

Fourth, as to consistency with the other terms of the transmission service agreement, again, this was explicitly consistent with the FERC principle that the possibility of curtailment other than *pro rata* curtailment had to be stated in the original transmission service agreement.

78. To sum up, HQT has failed to adequately answer these four questions. First, HQT has not stated the problem it intends to solve on the Intertie with harmonization. Second, HQT does not support its proposed level of ATC. Third, HQT does not justify its proposed allocation of remaining ATC. Fourth, and closely related to the third, the allocation proposed by HQT in the Complaint Case violates Section 2.2 and 13.6 of its Tariff.

79. Note, too, that HQT makes a change to Section 2.2 which is not required by the 890 Orders. HQT strikes the word “new” before “Eligible Customer”. The Régie should require HQT to explain its intent with and the impact of this change.

80. One final point should be made about the link FERC made between the reform of Section 2.2 and the addition of Attachment K. In essence, as seen in

³⁷ Ibid.

the two quotes which follow, FERC ruled that there can be no reform of Section 2.2 (the increase to a 5-year term) unless and until the Transmission Provider successfully files an Attachment K. As documented in the next section of my Report, HQT has not filed an Attachment K.

The Commission denies rehearing of the determination to tie the effectiveness of rollover reform to the acceptance of the transmission provider's coordinated and regional planning process required under Order No. 890. As the Commission explained in Order No. 890, reforms regarding rollovers and transmission planning must proceed together because they are closely related. Under our longstanding policy, transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning. Duke is therefore incorrect in suggesting that the Commission did not rely on our planning-related reforms when fashioning a remedy to ensure rollover policies remain just and reasonable and not unduly discriminatory.³⁸

With regard to TAPS' concern regarding the timing of compliance filings implementing the new rollover policies, we reiterate that the previously existing rollover provisions will remain in effect for the transmission provider until such time as the Commission accepts the transmission provider's Attachment K compliance filing. Accordingly, it is only after a transmission provider's Attachment K planning process is accepted by the Commission that the transmission provider should file the rollover reform language, and the effective date of that language should be commensurate with the date of that filing. We have revised section 2.2 of the pro forma OATT to make this clear.³⁹

³⁸ Order No. 890-A at ¶683.

³⁹ Ibid., at ¶684.

I have signed this report on September 28, 2010.

Craig R. Roach

Craig R. Roach

**ATTACHMENT ONE
LIST OF TESTIMONY AND OTHER PUBLICATIONS
FOR CRAIG R. ROACH, Ph.D.**

**LIST OF TESTIMONY AND OTHER PUBLICATIONS
FOR CRAIG R. ROACH, Ph.D.**

TESTIMONY

- Expert Report of Craig R. Roach, Ph.D., Régie de l'énergie, Nos. P-130-001 and P-130-003 [July 2010]. Filed on behalf of Énergie Brookfield Marketing, Inc.
- Direct and Supplemental Testimony concerning the application of Oklahoma Gas and Electric Company to construct the Crossroads wind farm, Cause No. PUD 201000037 [June 2010]. Filed on behalf of The Oklahoma Corporation Commission.
- Report on the Open Season for Zephyr Power Transmission LLC, Federal Energy Regulatory Commission, Docket No. ER09-433-000 [May 2010]. Filed as the Independent Evaluator for Zephyr Power Transmission, LLC.
- Phase Two Report of the Independent Evaluator concerning proposed alternatives to Mississippi Power Company's IGCC facility, Docket No. 2009-UA-014 [January 2010]. Filed as Consultant to the Mississippi Public Service Commissioners.
- Phase Two Direct Testimony concerning Mississippi Power Company's proposed IGCC facility, Docket No. 2009-UA-014 [December 2009]. Filed as Consultant to the Mississippi Public Service Commissioners.
- Phase One Direct Testimony concerning Mississippi Power Company's petition for acquisition, construction, and operation of an Integrated Gasification Combined Cycle (IGCC) facility, Docket No. 2009-UA-014 [July 2009]. Filed as Consultant to the Mississippi Public Service Commissioners.
- Responsive Testimony concerning the cost recovery and approval of a power purchase agreement between PSO and Exelon Generation, LLC, Oklahoma Corporation Commission Cause No. PUD 200900099 [July 2009]. Filed as the Oklahoma Commission's Independent Evaluator.
- Direct and Rebuttal Testimony concerning a service agreement between TransCanada Energy Ltd. and British Columbia Transmission Corporation for long term firm point-to-point transmission service. British Columbia Utilities Commission Project No. 3698539 [March and April 2009]. For TransCanada Energy Ltd.
- Report responding to the Commission's inquiries on emissions costs, construction costs, and fuel costs, Minnesota Public Utility Commission Docket No. CN-05-619 [October 2008]. For the Minnesota Commission.
- Testimony and Rebuttal Testimony concerning the design of the 2008 RFP, Oklahoma Corporation Commission Cause No. PUD 200700418 [June and August 2008]. Filed as the Oklahoma Commission's Independent Evaluator.
- Comments concerning PacifiCorp's proposed acquisition of the Chehalis power plant, Oregon Public Utility Commission Docket No. UM 1374 [June 2008]. Filed as the Oregon Independent Evaluator.

Reply comments concerning the 2008 Procurement Process, before the Illinois Commerce Commission [May 2008]. Filed as the Procurement Monitor.

Comments concerning the 2008 Procurement Process, before the Illinois Commerce Commission [May 2008]. Filed as the Procurement Monitor.

Direct Testimony concerning the proposed acquisition of TXU by private equity investors, Public Utility Commission of Texas Docket No. 34077 [September 2007]. For the Texas Commission.

Comments concerning PacifiCorp's proposal to amend and delay its 2012 RFP, Oregon Public Utility Commission Docket No. UM 1208. [November 2007]. Filed as the Oregon Independent Evaluator.

Affidavit concerning allegations of above-market prices and price manipulation in the 2006 Illinois Auction, Federal Energy Regulatory Commission Docket No. EL07-47-000. [June 2007]. Filed as the Auction Monitor.

Support for settlement of an electric transmission rate case, Federal Energy Regulatory Commission Docket No. ER06-186-000. [March and April 2006]. For the City of Vernon.

Testimony concerning market power mitigation measures for the Southwest Power Pool energy imbalance services market, Federal Energy Regulatory Commission Docket No. ER06-451-000. [January 2006]. Filed as the Southwest Power Pool's Independent Market Monitor.

Comments on the Maryland procurement process for Standard Offer Service, Maryland Senate Special Commission on Electric Utility Deregulation Implementation. [August 2005]. Appearing as the Technical Consultant for the Maryland Public Service Commission.

Direct and Supplemental Testimony concerning market power mitigation measures for the Southwest Power Pool energy imbalance services market, Federal Energy Regulatory Commission Docket No. ER05-1118-000. [June and August 2005]. Filed as the Southwest Power Pool's Independent Market Monitor.

Comments on the open access status of a transmission line, Federal Energy Regulatory Commission Docket No. ER05-1072-000. [June 2005]. Filed as the Southwest Power Pool's Independent Market Monitor.

Direct Testimony regarding the benefit of continuing PUCT Capacity Auctions in Texas, Public Utility Commission of Texas, Docket No. 30882. [May 2005]. For Reliant Energy, Inc.

Expert Report regarding the basis for and quantification of damages, 249th Judicial District Court (Texas) Cause No. C-2002-00267. [March 2005]. For Ponderosa Pine Energy, L.L.C.

Panelist on transmission market power and barriers to entry, Federal Energy Regulatory Commission Technical Conference Docket No. RM04-7-000, Washington, DC. [December 2004].

Expert Report concerning damage estimates regarding power sales contract, American Arbitration Association Case No. 71 198 00323 01. [October 2004]. For Ponderosa Pine Energy Partners, LTD.

Panelist on solicitation processes for public utilities, Federal Energy Regulatory Commission Technical Conference Docket No. PL04-6-000, Washington, DC. [June 2004].

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DISSERTATION

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