

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF
MONTRÉAL**

**NO: P-130-001
P-130-003**

RÉGIE DE L'ÉNERGIE

**ÉNERGIE BROOKFIELD MARKETING INC.,
Plaintiff**

and

HYDRO-QUÉBEC

Respondent

EXPERT REPORT

OF

CRAIG R. ROACH, Ph.D.

ON BEHALF OF

ÉNERGIE BROOKFIELD MARKETING INC.

JULY 30, 2010

TABLE OF CONTENTS

I. QUALIFICATIONS	1
II. PURPOSE, BACKGROUND, AND SUMMARY	2
A. Purpose and Background	2
B. Summary	4
III. EVIDENCE	8
A. EBMI's rollover rights under Section 2.2 of the current Tariff	8
B. The approach to curtailment allowed under the current Tariff	18
C. Potential commercial and anticompetitive harm to EBMI	21
D. HQT's proposed approach to harmonization	22
ATTACHMENT ONE.....	28

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 (FERC) 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. PURPOSE, BACKGROUND, AND SUMMARY

A. Purpose and Background

5. The purpose of this Report is to provide testimony in relation to the complaints filed before the Régie de l'énergie (Régie) on March 14, 2010 (P-130-001) and on June 8, 2010 (P-130-003) by Énergie Brookfield Marketing Inc. (EBMI) against Hydro-Québec TransÉnergie (HQT).¹

6. By way of background, EBMI holds Transmission Service Agreements with HQT for 306 MW of Long-Term Firm Point-to-Point Transmission service on the Canadian segment of a major Quebec-New England intertie termed Phase I/II HVDC-TF. 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.² EBMI uses these transmission service agreements in combination to reliably enter into and fulfill power sales contracts that it

¹ *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*”).

² *March 14 Complaint* at page 11 and Exhibit EBMI 20.

secures with electricity buyers in New England and elsewhere in the Northeast United States.³

7. The Service Agreements with HQT were made under HQT's Open Access Transmission Tariff (Tariff) and, as such, EBMI has the right to renew these agreements – this right is referred to as a “rollover right.”⁴ Since 1996, these rollover rights provisions have been part of the standard OATT approved by FERC.
8. HQT has informed EBMI that it will not honor these rollover rights⁵ – that is, HQT has refused to renew these service agreements as required under its existing Tariff. HQT's rationale is that it must substantially reduce the Available Transfer Capability (ATC) on the intertie. Specifically, HQT seems to rely on the requirement in the 890 Orders issued by the U.S. Federal Energy Regulatory Commission (FERC)⁶ that the calculation of Available Transfer Capability (ATC) must take into account, when applicable, transmission

³ *March 14 Complaint* at page 11.

⁴ *Hydro-Québec Open Access Transmission Tariff*, Section 2.2, and *March 14 Complaint* at page 6.

⁵ *Hydro-Québec response to February 25, 2010 Complaint from Énergie Brookfield Marketing Inc.*, (“*Hydro-Québec Response*”), March 11, 2010.

⁶ *Hydro-Québec Response* at page 2. 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.

constraints in neighboring areas – in this case, transmission constraints within New England.⁷ HQT refers to this as a requirement for “harmonization.”

9. 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 asserts that EBMI’s rollover request can be treated, at the time of renewal, the same as any new request for transmission service and, thereby denied if there is insufficient ATC.⁹

B. Summary

10. HQT believes it has the right to implement its plan for harmonization without seeking review and approval by the Régie. Accepting this for the moment, for the sake of argument, the issue for these Complaint proceedings then would be whether HQT’s approach to harmonization and allocation of available capacity, at the time of the renewal of the Service Agreements, is allowed under the terms of its current Tariff. I submit that the answer is clearly no, based on more than a decade of policy statements and case precedents at FERC. I cite FERC’s relevant pronouncements at length in the body of this Report.

⁷ *Hydro-Québec Response* at page 4.

⁸ *March 14 Complaint Exhibit EBMI 15*.

⁹ *Hydro-Québec Response* at page 4.

11. Under its current Tariff, HQT cannot deny EBMI's request for a rollover under Section 2.2 for the reasons it states. If, as HQT claims, 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.

12. The central flaw in HQT's argument is that it equates a rollover request from an *existing* customer to a request for transmission service from a *new* customer.¹⁰ 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 requiring rollover requests is to give equal treatment to 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.

13. The bottom line is that, if the Régie accepts HQT's argument that it has the right to implement harmonization under the current Tariff, the Régie must reject HQT's approach to implementing the consequences of harmonization.

¹⁰ Ibid.

Specifically, I submit that the Régie should reject HQT's approach to harmonization because (a) it violates Section 2.2 of the Tariff by wrongfully denying EBMI's rollover request and (b) it 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.

14. However, as a threshold matter, and in the alternative, the Régie may reject HQT's approach to harmonization because HQT failed to seek prior Régie approval. The Régie might rule that such approval is necessary because the proposed harmonization causes such a substantial change in ATC – a reduction from a nominal 2,000 MW to 1,200 MW. The Régie might also do so because the potential harm to other firm transmission customers is so significant.

15. It is important to see that these Complaints 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 EBMI. The commercial harm comes because EBMI has 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 EBMI 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.

16. If the Régie requires HQT to seek approval from the Régie for any harmonization plan, then HQT would have to create a full record before the Régie to support harmonization; presumably this record would have to be created in the parallel Rate Case that is now being conducted. HQT would have to explain and support both the allocation of any reduced ATC as well as the level of reduction.

17. As to the allocation of any ATC reduction, HQT clearly has failed to consider the alternatives – it even failed to consider *pro rata* allocation which is the only option allowed under its current Tariff. But there are other options for allocation that the Régie could consider in the Rate Case. For example, start with HQT's argument that the only way to harmonize is for HQT to set its firm ATC on the Canadian segment of the intertie equal 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 firm ATC on the Canadian segment should also be set equal to that on the New England segment; put simply, 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.

18. As to the level of the reduction of firm ATC, there is a range of opinion that should be explored; 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 New England’s capacity requirements.¹¹ 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.

III. EVIDENCE

A. EBMI’s rollover rights under Section 2.2 of the current Tariff

19. 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

¹¹ *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, April 19, 2007, page 8.

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, 2009.¹² Importantly, all of these transmission agreements were completed pursuant to the terms and conditions of the HQT Tariff in force at the time of execution.

20. EBMI has renewal rights under its service agreements pursuant to Section 2.2.

As stated in the current Tariff at Section 2.2 in part:

Existing firm transmission service customers with a contract term of one year 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 one year or longer, provided the customer notifies the Transmission Provider in writing and on OASIS no later than sixty (60) days before the end of the contract.¹³

Note that HQT's Section 2.2 is modeled after FERC's standard OATT approved in Order 888.

21. By denying EBMI's rollover request, HQT has simply refused to comply with the terms of the Service Agreements and its current Tariff.

22. HQT makes several assertions in rebuttal to EBMI which attempt to diminish the rollover rights in its current Tariff and, thereby, to justify its denial of

¹² *March 14 Complaint* at pages 1 to 5 and *March 14 Complaint Exhibits* 1, 2, 6, and 7.

¹³ Hydro-Québec Open Access Transmission Tariff, Section 2.2, updated April 13, 2010.

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 attributable to EBMI."¹⁴ Second, 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.¹⁵ Third, HQT asserts a rollover request "is considered a new request or transmission contract, as stated in OATT Section 2.2."¹⁶

23. 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)

¹⁴ Hydro-Quebec Response at page 4.

¹⁵ Ibid.

¹⁶ Ibid.

and an Order denying SPP's request for rehearing (Order Denying Rehearing).¹⁷

24. 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.

25. 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

¹⁷ 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]

26. 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.

27. 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).

28. 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.

29. 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.

30. 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]

31. 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.

32. 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. The approach to curtailment allowed under the current Tariff

33. If there is a substantial reduction in firm ATC as asserted by HQT, what approach to curtailment is prescribed under the current Tariff? In other words, how should we go about allocating the remaining firm ATC to existing customers?
34. 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.

35. 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.¹⁸ 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.

36. 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.

37. 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:

¹⁸ Federal Energy Regulatory Commission, ConocoPhillips Company v. Entergy Services, Inc., *Order on Compliant*, Docket No. EL08-59-000, Issued July 24, 2008.

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.

38. 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.

39. 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.

40. 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. Potential commercial and anticompetitive harm to EBMI

41. It is important to remind ourselves that these Complaints are not motivated by an academic debate about open access tariff language. Rather, they are motivated by the fact that HQT's position has the potential to harm EBMI in both commercial and anticompetitive terms.

42. Key to commercial harm is the fact that EBMI has signed and is in the business of signing sales contracts which obligate it 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.

43. As to anticompetitive harm, my concern is that HQT's attempt to unilaterally 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, EBMI made contractual commitments to deliver electricity products over the 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.

D. HQT's proposed approach to harmonization

44. In sum, what I intended to show so far in my testimony is that HQT's proposed approach to harmonization violated its current Tariff. HQT has failed to comply with Section 2.2 of its current Tariff because it wrongfully denied EBMI its rollover rights. HQT has failed to comply with Section 13.6 of its current Tariff because, in the face of an asserted insufficiency of ATC, HQT failed to propose a *pro rata* curtailment.

45. My discussion so far has assumed, for the sake of argument, that HQT is right in its assertion that it does not have to seek Régie review and approval of its approach to harmonization. If the Régie believes this is the case, then the Régie can simply reject HQT's approach to harmonization because it violates Sections 2.2 and 13.6 of the current Tariff.

46. If however, the Régie believes HQT must seek Régie approval, then the Régie can reject HQT's approach to harmonization because HQT has failed to seek such approval. The Régie could come to this belief because the changes HQT is proposing are so substantial and the potential for harm also is so significant.
47. If the Régie calls for a full review of HQT's plan for harmonization, I presume it will be in the parallel Rate Case. HQT would have to create a full record to support both the allocation of any reduced ATC as well as the level of reduction.
48. As to allocation, *pro rata* curtailment is one approach that the Régie may consider because it is required under the current Tariff. However, the Régie should feel free to look for other approaches that are both fair and economically efficient. 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. 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.

49. 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.
50. 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 Quebec 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.

51. Third, since HQT proposes to use the 1,200 MW total firm ATC 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.
52. As to the level of ATC, it seems that HQT believes the reduction in firm ATC 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 – in this case in New England – 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.
53. By way of background, 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.¹⁹ As explained in filings to FERC, the reason for this limit is that the intertie can become the largest

¹⁹ *ISO New England Calculation of TTC for External Interfaces and ATC for PTF Interfaces, Version 3.1*, March 27, 2009 (“*ISO-NE Calculation*”).

contingency in the NYISO, PJM, and/or New England regions if it exceeds a firm ATC of 1,200 MW.²⁰

54. Before HQT can implement any harmonization it should create a record which supports the extent of any reduction it proposes in firm transmission service. As a start, HQT should provide an hourly record of the historical operating experience on the 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?

55. 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 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.²¹

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

²⁰ 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.

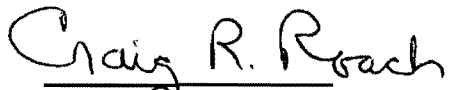
²¹ *2007 ISO-NE Briefing*, at page 8.

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.

56. In sum, if the Régie finds that HQT must seek Régie approval for its approach to harmonization, I believe HQT must (a) evaluate a full range of options for allocating the reduced level of ATC and (b) provide quantitative support for the level of ATC needed for harmonization. And, again, I presume this review would be done in the parallel Rate Case proceeding.

57. This ends my Expert Report.

I have signed this report on July 30, 2010.


Craig R. Roach

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

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FOR CRAIG R. ROACH, Ph.D.**

TESTIMONY

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