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PROVINCE OF QUÉBEC
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RÉGIE DE L'ÉNERGIE

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

DIRECT TESTIMONY

OF

DR. ROBERT A. SINCLAIR

On behalf of

NEWFOUNDLAND AND LABRADOR HYDRO

June 10, 2009

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I. INTRODUCTION AND SUMMARY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS

A. My name is Robert A. Sinclair. I am an economist and Vice President at Potomac Economics. Our business address is 9990 Fairfax Boulevard, Fairfax, VA 22030.

Q. PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I have a Ph.D. in economics from the University of Pittsburgh. My major fields of expertise include industrial organization, antitrust, regulation, statistical analysis, and microeconomic theory. I have been an economic consultant since 1993 and have provided expert testimony and reports in a number of jurisdictions on matters relating to competition, prices, cost of service, and market monitoring in the electric utility industry.

I have published articles in academic and professional journals on economics, law, and regulation. I have also spoken on technical and policy matters at a number of professional conferences. I have taught university courses in industrial organization, antitrust, microeconomic theory, and law and economics. My resume is attached as Exhibit No. RAS-2.

Q. WHAT IS YOUR ROLE AT POTOMAC ECONOMICS?

A. Potomac Economics is a consulting firm that specializes in market monitoring, including monitoring the implementation and administration of transmission tariffs and policies. My main responsibility at Potomac Economics is managing cases relating to monitoring transmission networks. Current and former transmission system monitoring assignments of Potomac Economics include Arizona Public Service, Oklahoma Gas & Electric, Public Service Company of New Mexico, PacifiCorp, MidAmerican Energy Company, and Duke Energy. We also provide monitoring services associated with open-access transmission in South East Europe.

In addition to our monitoring of transmission networks, Potomac Economics also provides market-monitoring services to the Electric Reliability Council of Texas, ISO-New England, the Midwest ISO, and the New York ISO.

Q. DO ISSUES ASSOCIATED WITH THE IMPLEMENTATION OF OPEN-ACCESS POLICIES ARISE IN YOUR ASSIGNMENTS RELATING TO TRANSMISSION-SYSTEM MONITORING?

A. Yes. In general, our cases involving the monitoring of transmission networks require us to ensure transmission operators are adhering to open-access policies. These policies include, among other things, monitoring the calculation, allocation, and reservation of transmission capacity.

Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

A. I am filing this testimony on behalf of Newfoundland and Labrador Hydro (NLH). NLH is a Crown corporation involved in the production, transmission, and distribution of electricity in Newfoundland and Labrador. NLH and its parent company Nalcor Energy are also involved in development and marketing of generation projects, including the development of a 2800 MW hydroelectric project on the Lower Churchill River in Labrador.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have been asked by NLH to address certain issues that arise in connection with the revised Open Access Transmission Tariff (OATT) filed by Hydro-Québec TransÉnergie (HQT) in this proceeding. The HQT filing is in response to the 2007 issuance of Order 890 by the U.S. Federal Energy Regulatory Commission (FERC).¹ Order 890 is the FERC's final rule in a comprehensive and far-reaching rule-making aimed at amending and clarifying the FERC *pro forma* OATT that was initially established in 1996 (FERC Order 888). The *pro forma* OATT establishes the open-access policies applicable to all transmission-owning utilities under FERC jurisdiction. HQT is not under FERC jurisdiction. However, in

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

order for HQT or its affiliates to access the benefits of open-access transmission in U.S. electricity markets, HQT is required to offer reciprocal open-access transmission service on its system that is consistent with or superior to the *pro forma* OATT.

The purpose of my testimony is to determine whether certain key provisions of the revised HQT OATT conform to or are superior to the provisions of the *pro forma* OATT contained in Order 890 (*pro forma* 890 OATT).

Throughout my testimony, I will refer to certain aspects of the operating divisions of Hydro-Québec (HQ). HQ-TransÉnergie (HQT) is the division of HQ that operates the transmission grid and executes the open-access transmission tariff. HQ-Production (HQP) is the division that manages the generating resources of Hydro Québec. Finally, HQ-Distribution (HQD) is the load-serving entity that distributes bulk power to HQ retail end users.

Q. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?

A. My testimony is organized in a manner that corresponds to major areas of reform contained in Order 890.² I address certain provisions (or lack of provisions) in the revised HQT OATT and evaluate them against the proposed reforms in Order 890. In instances where provisions of the revised HQT OATT do not meet or exceed the corresponding *pro forma* 890 OATT, HQT may be failing its reciprocity obligation.

In accordance with the major areas of Order 890 reform, my testimony addresses the following topics. Section II: Consistency and Transparency of ATC Calculations; Section III: Coordinated, Open and Transparent Planning; Section IV: Transmission Pricing; Section V: Non-Rate Terms and Conditions; and Section VI: Credit Worthiness.

² The reference to Order 890 generally also refers to the related Order 890-A and 890-B. Of course, specific citations are to Order 890 unless indicated otherwise.

Q. WHAT STANDARD WILL YOU USE TO ASSESS THE COMPARABILITY OF THE REVISED HQT OATT TO THE REFORMS IN THE *PRO FORMA* 890 OATT?

A. In evaluating the revised HQT OATT, I will apply the standard identified in Order 890 to assess whether the revised HQT OATT meets the reforms. In particular, at ¶ 135, the Order requires FERC-approval of rates and terms that differ from the *pro forma* 890 OATT, but such rates and terms must be “consistent with or superior to” the corresponding rates and terms in the Order (which includes the elements of the *pro forma* 890 OATT).

Q. PLEASE SUMMARIZE YOUR SPECIFIC CONCLUSIONS AND RECOMMENDATIONS.

A. The following is a summary of the issues addressed, my conclusions, and recommendations:

Consistency and Transparency of ATC Calculations. As recognized by Order 890, the lack of consistency and transparency of Available Transfer Capability (ATC) calculations across the industry has created a potential for discriminatory transmission practices. Accordingly, Order 890 requires transmission providers to provide details of their ATC calculations to ensure industry-wide consistency and to prevent undue discrimination. Based on my analysis of the revised HQT’s OATT, I conclude:

- HQT has failed to specify ATC calculations for the operating horizon and the planning horizon, as required in Order 890;
- Certain definitions relating to native-load capacity reservations are inconsistent with Order 890;
- The lack of clarity in Attachment C-1 provides the opportunity for HQT to exercise wide discretion and may result in undue discrimination. To help eliminate this potential, I recommend the Régie take advantage of HQT’s

on-going OASIS development phase by instructing HQT to hold technical briefing sessions on the OASIS system and ATC processes.

Coordinated, Open, and Transparent Planning. A main element of the Order 890 reforms is the requirement that transmission providers adopt a coordinated, open, and transparent transmission planning process that invites meaningful participation by transmission customers, regulators, and other stakeholders. Order 890 requires transmission providers to include an attachment to their OATTs that provides the details of this process (Attachment K).

- HQT did not provide an Attachment K. Instead, HQT claims that the planning process is primarily aimed at deficient infrastructure in the U.S. and is not pertinent to Québec. Furthermore, HQT claims that the existing investment authorization process in Québec is sufficient.
- I conclude that the proposed planning process reforms are intended to improve open access in general and not, as HQT claims, primarily to address the situation in the U.S. Furthermore, the existing investment authorization process does not provide the adequate coordination, openness, and transparency required in the Order 890 reforms.
- I recommend that the Régie require HQT to adopt the coordinated planning process reforms in Order 890.

Transmission Pricing. Among the reforms addressed in Order 890 is the pricing and policies regarding energy imbalance service. In this respect, HQT has initiated an agreement with IESO limiting the application of HQT's imbalance requirements for generators located in Ontario. This may lower the overall transmission cost for these suppliers and create disadvantages to generators located in other control areas. However, the basis for this agreement is unclear.

- I recommend HQT explain the basis for the agreement and the conditions under which the agreement may apply to other neighboring control areas.

Non-Rate Terms and Conditions. Order 890 addresses a range of non-rate issues. I focus on two issues relating to distributor/network resources.

I first address policies associated with designating power purchase agreements (PPAs) as network resources. In particular, Order 890 clarifies that a PPA may be designated as a network resource provided it is not interruptible for economic reasons. The primary emphasis is on the form of liquidated damages in the event of interruption. Order 890 requires that PPAs designated as distributor/network resources contain “make-whole” liquidated damages provisions.

- I recommend that the Régie endorse the Order 890 requirement that PPAs have “make-whole” liquidated damages provisions in order to qualify as a distributor/network resource.

The second issue involves Order 890 policies associated with undesignating network resources to enable firm third-party sales from designated resources. The undesignating process would increase the accuracy of ATC calculations and prevent hoarding of transmission.

- I recommend that ATC allocated to HQP resources supplying the Heritage Pool be released to the market when these resources are making firm third-party sales and that the ATC be adjusted accordingly.
- I also recommend that the reporting requirement under section 37.1 (iv) of the revised HQT OATT be expanded to require a description of off-system network resources. .

Overall, these recommendations would help ensure the terms and conditions of the revised HQT OATT meet the reforms in Order 890 and reduce the potential for discriminatory transmission practices. This, in turn, will help ensure a fuller use of the HQT grid and contribute to increased competition and efficiency in regional electricity markets.

Creditworthiness. Order 890 Reforms require specification of creditworthiness procedures in order to help limit the potential for undue discrimination.

- I find that HQT's creditworthiness provisions allow potential for significant discretion and create the potential for undue discrimination.
- I recommend certain modifications to HQT's creditworthiness procedures to address these concerns.

II. CONSISTENCY AND TRANSPARENCY OF ATC CALCULATIONS

Q. WHAT IS THE PURPOSE OF THE 890 REFORMS AS THEY RELATE TO THE "CONSISTENCY AND TRANSPARENCY OF ATC CALCULATIONS"?

A. ATC indicates whether and to what extent transmission capability is available for wholesale buyers and sellers to enable participation in wholesale electricity markets. As a result, reliable and accurate ATC values are among the most essential elements of effective open access.

Order 890 reforms associated with ATC calculations are motivated by FERC's recognition that ATC calculations had not been consistent or transparent across the industry and this had created a potential for discriminatory transmission practices. As stated in Order 890:

The purpose of increasing the consistency and transparency of ATC calculations is to reduce the potential for undue discrimination in the provision of transmission service, specifically by reducing the opportunity for transmission providers to exercise excessive discretion. We find that the amount of discretion in the existing ATC calculation methodologies gives transmission providers the ability and opportunity to unduly discriminate against third parties. In order to minimize this discretion, [Order 890] requires that all ATC components (i.e., TTC, ETC, CBM, and TRM) and certain data inputs, data exchange, and assumptions be consistent and that the number of industry-wide ATC calculation formulas be few in number, transparent and produce equivalent results. [FERC] finds that these reforms will facilitate development of a more coherent and uniform determination of ATC (Order 890, ¶207).

Q. IS HQT PROPOSING TO REVISE ITS APPROACH TO ATC CALCULATIONS?

A. Yes, HQT submitted an Attachment C-1 to its revised OATT that specifies certain aspects of how HQT plans to calculate ATC. Section 44.1 of the revised HQT OATT states that Attachment C-1 will come into force “at the date of HQT’s new OASIS system.” HQT does not specify when this new OASIS system will be ready, thus delaying indefinitely the coming into force of the new ATC requirements and, therefore, delaying indefinitely the full implementation of the Order 890 reforms. This is undesirable and I recommend that the Régie require a timeline with specific dates for implementation of the new OASIS system in order to ensure the full implementation of the Order 890 reforms.

Q. DOES HQT’S ATTACHMENT C-1 SATISFY THE REQUIREMENTS OF THE *PRO FORMA* 890 OATT?

A. No. The main problem with Attachment C-1 is that it fails to provide algorithms specifying the calculation of ATC in the “operating” and the “planning” horizons. Attachment C-1 only presents the ATC calculation in the “scheduling horizon” and in what HQT terms the “real-time horizon”. Order 890 is specific about this:

[Attachment C] must provide a detailed description of the specific mathematical algorithm the transmission provider uses to calculate firm and non-firm ATC for the scheduling horizon (same day and real-time), operating horizon (day ahead and pre-schedule), and planning horizon (beyond the operating horizon) (Order at ¶323).

While there is mention in Attachment C-1 of annual, monthly, weekly, and daily transfer capability, the Attachment does not contain the required mathematical algorithm for the planning horizon.

Q. HAVE YOU IDENTIFIED OTHER ELEMENTS OF ATTACHMENT C-1 THAT ARE NOT CONSISTENT WITH THE OATT REFORM?

A. Yes. In Attachment C-1, HQT uses three terms that refer to transmission capacity used to serve Québec Native load. These terms are QCRD, QCRND_{firm}, and QCRND_{nonfirm}. The QC class generally refers to Québec native load service. “D” refers to designated and “ND” to non-designated.

While setting aside ATC for native load service is consistent with the *pro forma* 890 OATT, the idea embodied in the term $QCRND_{firm}$ appears to create firm rights from non-designated resources, which is not consistent with the *pro forma* 890 OATT.

When a load-serving entity imports, it does so either from a designated or non-designated resource. In using a designated resource, the native load transmission service establishes the firm transmission rights and HQT reduces the ATC on the interconnections to allow for the import. This is the proper intention for the QCRD designation. This is set out in Section 36.1 of the revised HQT OATT and is consistent with the *pro forma* 890 OATT.

Section 36.3 of the revised HQT OATT allows native load to be served from non-designated resources on a non-firm basis using “secondary service”. This is represented in Attachment C-1 by $QCRND_{nonfirm}$ and is consistent with the *pro forma* 890 OATT. The load serving entity runs the risk of being pushed out if a firm reservation is made by a third party on the path since the “secondary” service is on an “as available basis”.

There is no service in the *pro forma* 890 OATT that allows firm imports from non-designated resources (so-called $QCRND_{firm}$) to serve native load. Firm imports from non-designated resources must be arranged under the point-to-point provisions of the tariff. The firm transmission product has only a single delivery point; it is not suited to serving dispersed loads. The *pro forma* 890 OATT provides for a secondary transmission service product for use if the load serving entity intends to serve native load from a non-designated resource

The circumstances are confounded by Attachment C-1 described the calculation of existing transmission commitments (ETC):

- ii) Since the Transmission Provider offers Point-to-Point Transmission Services over interconnections with neighboring systems, the ETC related to Native Load needs is represented directly by Point-to-Point (PTP) Service reservations designated as “QCRD” (Attachment C-1 of the revised HQT OATT, at sheet 190).

It seems that with this clause, HQT is attempting to create a “QC” product as a point-to-point service. This is contrary to the philosophy of the *pro forma* 890 OATT. The native-load service either applies or point-to-point service is required. Point-to-point service and native-load service must be kept mutually exclusive. .

We recommend that the denomination “QC” be dropped from the text of the OATT and replaced by “Native Load Transmission Service” and “Secondary Native Load Transmission Service” in order to avoid this type of confusion in which point-to-point service may be converted into a form of native-load firm service even from an undesignated resource.

Q. IS THIS NOT SIMPLY A QUESTION OF TERMINOLOGY?

A. No. These variables are used in the ATC equations to represent existing transmission commitments to serve native load. While it is consistent with the *pro forma* 890 OATT to allocate transmission capacity to native load before calculating ATC, HQT’s current use of the transmission subclass QCRD is being used to reserve transmission capacity for non-native-load transmission customers. For example, HQP currently imports power from New Brunswick with a network service reservation under a subclass of service “QC-RD” (See OASIS reservation #418301 attached as RAS-3). This situation appears to be inconsistent with the *pro forma* OATT because no network service agreement has been executed between HQP and HQT. In a separate Régie case, (Complaints P-110-1565 – 1566-1597-1678-1692), NLH asked HQT about this particular reservation (NLH Information Request No. 3,3b). HQT acknowledged that HQP made the reservation and that HQP was not a native-load transmission service customer. HQT stated, “at the time reservation #418301 was registered, [HQP] did not have the ability to write in the Transmission Provider’s OASIS system. The reservation was therefore registered by HQM [the OASIS code for HQP].”

However, this appears to be more than a technical OASIS issue. HQP is the purchaser of the resources from New Brunswick associated with the reservation. This suggests that even if HQD had the ability to use OASIS at the time, it would

have been improper for HQD to use native-load transmission service for a resource under HQP's control. Hence, it appears HQP is using native-load transmission service to deliver capacity and energy under its purchase contract. The Régie should require HQD to clarify this situation and bring the circumstances into conformity with the HQT tariff. In particular, if the New Brunswick purchase is a designated distributor resource, then the native-load service should be used to reserve transmission (and HQD should designate the resources as such, in accordance with 38.1 and 38.2 of the HQT OATT). If the New Brunswick purchase is not a distributor resource, point-to-point service should be used to reserve import capability. Native-load transmission service should not be used by market participants that do not have Native Load Transmission Service agreements. In addition, non-load-serving entities should not benefit from using subclasses associated with the service of native load.

Q. WHAT DO YOU CONCLUDE REGARDING THE CONSISTENCY OF ATTACHMENT C-1 WITH THE *PRO FORMA* 890 OATT?

A. Generally, Attachment C-1 is meant to contain a significant amount of detailed information in order to provide the desired clarity and transparency of ATC calculations. However, in its current state, the processes are not clear. As indicated, mathematical algorithms for critical products are not provided and there is the mixing of native-load and point-to-point concepts associated with the "QC" service class. As explained in the next subsection, there should be a way to release capacity to the market when a distributor resource (or a Heritage Pool resource) makes a firm third-party sale. That involves careful consideration and is not clearly reflected in Attachment C-1.

Because of the lack of clarity and the complexity of the issues involved, I recommend the Régie instruct HQT to hold technical sessions with stakeholders to explain the OASIS system in the context of the revised HQT OATT. These sessions would provide transmission customers and regulators an opportunity to gain a better understanding of the proposed ATC calculations while also

facilitating customer and regulator input. Such stakeholder processes and working groups are standard practices in neighboring transmission systems, like the New York ISO and the Midwest ISO.

III. COORDINATED, OPEN, AND TRANSPARENT PLANNING

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

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

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

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

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

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

In order to provide for more comparable open access transmission service, limit the potential for undue discrimination and anticompetitive conduct, and satisfy its statutory responsibilities under section 217 of the FPA [concerning infrastructure], the [FERC] proposed to amend the pro forma

OATT to require coordinated, open, and transparent transmission planning on both a local and regional level (Order at ¶426).

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

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

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

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

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

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

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

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

The process should also allow customers to choose studies and request certain “high priority” cases:

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

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

A. As indicated above, Order 890 (at ¶437) requires that each transmission provider include an attachment to its OATT that documents the existence of a coordinated and regional planning process that complies with principles established in the Order. Transmission providers with existing planning processes must show such processes are “consistent with or superior to” the requirements in the Order.

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

A. No. In submitting its revised OATT in this case, HQT indicated that its current transmission planning process adequately addresses the concern expressed in Order 890 with regard to transmission planning and, accordingly, HQT concluded

that it was not necessary to include an OATT Attachment containing provisions for transmission planning consistent with Order 890.

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

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

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

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

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

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

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

Consider also ¶422:

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

And consider ¶425:

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

Given these express concerns in the Order about discriminatory conduct, HQT's claim that the Order 890 planning requirement is primarily aimed at infrastructure development is misleading. Indeed, eliminating and preventing discriminatory conduct is emphasized in the Order as much as if not more than the state of grid investment. Accordingly, stimulating investment in the U.S. transmission network is neither the sole nor even necessarily the overriding concern being addressed by Order 890.

There is also a reciprocity issue involved if HQT fails to develop coordinated planning while transmission providers in the U.S. do so. Even if it were true that the planning requirement was primarily a matter of stimulating transmission investment in the U.S., transmission investments have critical market impacts and provide general competitive benefit. As a result, if reform of transmission

planning in the U.S. makes it easier for Québec suppliers to sell there because of increased transmission capacity, having in place a coordinated planning process allows HQT to reciprocate, even if, as HQT claims, no increase in Québec capacity is presently needed.

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

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

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

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

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

Q. DOES HQT'S FILING ADDRESS DISCRIMINATION?

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

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

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

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

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

A coordinated planning process is superior to a regulatory proceeding because stakeholders are involved at a much earlier stage and are provided critical information. In a regulatory proceeding, the transmission owner conducts the planning studies prior to proposing the projects to regulators. Once these are unveiled at the regulatory proceeding, transmission customers and other stakeholders are then provided the results, which typically are summary in nature.

³ Order 890 goes on to note:

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

Transmission customers gaining access to underlying modeling and data requires information requests.

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

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

Q. WHY IS THE INFORMATION REQUEST PROCESS CUMBERSOME?

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

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

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

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

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

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

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

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

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

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

HQT responded:

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

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

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

Unfortunately, individuals experienced in litigation are familiar with this frustration. These are only simple and clear examples of the disadvantage that transmission customers can experience when trying to use regulatory proceedings as a way to protect their interests in the transmission planning process. Of course, unreasonable responses to information requests can be appealed and litigated. However, this tends to delay proceedings and while a just outcome may prevail,

- using litigation as a means to exchange information is far less efficient than a coordinated, open process that serves to avoid after-the-fact disputes.
- Q. IS THERE ANOTHER REASON LITIGATION BEFORE RÉGIE IS INFERIOR TO A COORDINATED PLANNING PROCESS?
- A. Yes. The litigation process also separates the technical experts by requiring communication through attorneys as opposed to direct discussion. A coordinated, open process would bring together directly the transmission provider's experts with the experts of the transmission customers and other stakeholders.
- Q. HAVE TRANSMISSION CUSTOMERS BEEN ADVERSELY AFFECTED IN QUÉBEC BY THE LACK OF A COORDINATED, OPEN, AND TRANSPARENT PLANNING PROCESS?
- A. Yes. In January 2006, NLH made a transmission service request for transmission long-term service from the proposed Lower Churchill project into Ontario, New England, New York, and New Brunswick. In the absence of transparency in HQT's planning process, NLH, with no guidance or insight from the transmission provider, had to request that a range of capacity bookings be studied. A more open and transparent planning process would have enabled NLH to make its transmission service request from a more informed perspective, rather than having to request specific detailed information during the system impact study itself. Furthermore, a more open planning process would allow the transmission customer to assess the results of the system impact studies more fully. NLH has been adversely affected by the absence of transparency and, as result, it elected to seek redress at the Régie in filing several complaints.
- Q. ARE YOU AWARE OF CIRCUMSTANCES THAT INDICATE AN ABSENCE OF OPENNESS IN HQT'S PLANNING PROCESS?
- A. Yes, when NLH sought to intervene in the Régie investment proceeding (R-3696-2009), HQT initially objected. Among several objections, HQT stated:

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

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

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

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

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

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

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

IV. TRANSMISSION PRICING (IMBALANCE SERVICE)

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

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

Q. WHAT ARE THE IMBALANCE POLICIES THAT YOU ADDRESS?

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

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

A. It is not clear from the letter exactly why this agreement was needed and what the implications are for other transmission customers. It appears the transmission providers agree that IESO can address balancing concerns itself in the event an Ontario generator dispatches to HQT. My conclusion is only based on reading the letter. In order to find out more, NLH issued an information request. Here is the data request (NLH request 11.1):

Please provide more detail explaining the conclusion that imbalances “can be dealt with at a balancing authority level”.

HQT response:

Conformément à la décision D-2009-056, le Transporteur dépose sa preuve concernant le texte des annexes 4 et 5 des *Tarifs et conditions* concernant les écarts de réception et de livraison dans un document distinct.

ENGLISH TRANSLATION: As requested by decision D-2009-056, HQT is filing its evidence with respect to Schedule 4 and 5 of the Open Access Transmission Tariff with respect to Energy Imbalance Service (Receipt and Delivery) in a separate document.

This response was not helpful. Régie decision D-2009-056 is an order requiring HQT to file revised imbalance Schedules (Schedules 4 and 5). This filing was

made on May 29, 2009 and I am informed by counsel that it contained no explanation of the special agreement with IESO.

Q. DO YOU OBJECT TO THE AGREEMENT?

A. I do not necessarily object to the agreement. In general, however, I can see why it might be reasonable to come to such an agreement. However, the rationale is not stated. It would be interesting to know, for example, what other control areas may be able to come to comparable agreements. Therefore, I recommend that the Régie require a more thorough explanation of the rationale for the agreement and the conditions under which other neighboring systems (like Labrador) can make agreements that avoid HQT imbalance charges.

V. NON-RATE TERMS AND CONDITIONS

Q. WHAT IS THE PURPOSE OF THIS SECTION?

A. In this section, I address certain non-rate terms and conditions established in Order 890 that have particular significance to HQT. The first issue involves policies associated with designating power purchase agreements (PPAs) as network resources (as explained below, these are called “distributor resources” in Québec). In particular, Order 890 clarifies that a PPA may be designated as a network resource provided it is not interruptible for economic reasons. The second issue I address is the Order 890 policy associated with undesignating network resources to enable third-party sales from such resources.

PPAs as Designated Network Resources

Q. WHAT IS MEANT BY DESIGNATED NETWORK RESOURCES?

A. Load-serving entities that integrate load and resources purchase network transmission service (called Network Integration Transmission Services under the *pro forma* OATT). In Québec, native-load customers are served by HQD primarily from resources that comprise the “Heritage Pool”. To integrate the Heritage Pool resources with its load centers, HQD uses network-type service.

Under the HQT OATT, this transmission service used by HQD is called Native-Load Transmission Service. Native-Load Transmission Service is analogous to the Network Integration Transmission Service in the *pro forma* OATT. Resources used by HQD to serve its native load are called “distributor resources”, as opposed to “network resources” under the *pro forma* OATT.

To simplify the foregoing discussion, reference to “network service” is to both the Network Integration Transmission Service in the *pro forma* OATT and to the analog in the HQT OATT, Native-Load Transmission Service. “Network resource” refers to that term as it is used in the *pro forma* OATT but is also meant to refer to the analogous term “distributor resources” associated with Native-Load Transmission Service in the HQT OATT.⁴ I may refer to “native-load transmission service and to distributor resources if it aids in the exposition or in specific reference to the HQT OATT.

Q. PLEASE DISCUSS THE ORDER 890 REFORMS ASSOCIATED WITH DESIGNATING POWER PURCHASE AGREEMENTS AS DESIGNATED NETWORK RESOURCES.

A. Order 890 clarifies a number of issues relating to the types of power purchase agreements (PPAs) that qualify as network resources. PPAs are structured in many different ways. Some PPAs involve sales from a specific generator resource while others may be so-called “system sales”, where power is purchased from a combination of a supplier’s generator fleet. Other PPAs may be “seller-choice” contracts where the seller promises to deliver power but not from a specific resource.

The portion of Order 890 addressing the designation of PPAs as network resources essentially serves as a vehicle for clarifying FERC policy. Ever since the concept of network service was introduced in the 1990s, FERC has been confronted with a range of issues associated with the appropriate nature of

⁴ One must be careful to note that the HQT OATT also contains a Network Integration Transmission Service that is available to load-serving entities other than HQD. However, no entity currently purchases this service.

designated network resources, especially how PPAs may be designated as network resources. The pre-890 *pro forma* OATT already requires load-serving entities to identify key characteristics of any PPA that is designated as a network resource, including source of supply, the control area location of the supply, transmission arrangements, and delivery point(s) to the transmission provider's transmission system (see Section 29 of the *pro forma* 890 OATT).

Q. WHAT ISSUES ARE THE MOST RELEVANT FOR THE REVISED HQT OATT?

A. Presently, HQD's native load is served either by physical resources controlled by HQP (and supplying the Heritage Pool) or from post-heritage PPAs (I understand that no off-system PPAs have been designated by HQD). Accordingly, the applicable reforms to evaluate in this case are those discussed in Order 890 addressing designating PPAs as network resources. (Of course, in the case of HQT, we are talking about PPAs as designated distributor resources.)

Q. WHAT ARE THE PPA ISSUES THAT ORDER 890 ADDRESSES THAT ARE IMPORTANT TO THE HQT OATT?

A. The most important aspect of Order 890 is FERC's affirmation of policies regarding the conditions under which PPAs may be designated as network resources. Order 890 affirmed that a PPA may be designated as a network resource provided the power sale is interruptible only for reliability reasons, not economic reasons.

The primary element of this determination is the nature of the penalties, or liquidated damages (LD), associated with an interruption. As Order 890 indicates (at 1453):

[T]he firmness of an obligation to provide under a contract with an LD provision is informed by the particular terms of the LD provision. The type of LD provision commonly seen in firm LD products ... obligates the supplier, in the case of interruption for reasons other than force majeure, to make the aggrieved buyer financially whole by reimbursing them for the additional costs, if any, of replacement power.

The Order goes on to state that LD provisions are the minimum required:

Thus, as of the effective date of this Final Rule, power purchase agreements designated as network resources may only contain LD provisions that are of the “make whole” type. Conversely, power purchase agreements containing LD provisions that provide penalties of a fixed amount, that are capped at a fixed amount, or that otherwise do not require the seller to pay an aggrieved buyer the full cost of replacing interrupted power, are not acceptable.

Q. WOULD THE ORDER REQUIREMENT APPLY TO EXISTING AGREEMENTS?

A. Existing PPAs that are otherwise properly designated as network resources would be “grandfathered” under the Order. However, the make-whole LD requirement would apply to existing agreements if the PPA is renewed or is undesignated on a non-temporary, or “indefinite” basis (as discussed in the next subsection of my testimony, and as discussed at ¶1534 of the Order).

Q. WHY IS IT IMPORTANT THAT THE RÉGIE ACCEPT THE REQUIREMENT OF ORDER 890 ON THIS ISSUE?

A. HQT’s transmission customers have interest in supplying wholesale power to Québec and to points south and west, which require the use of the Québec transmission network. To execute their commercial activities, these transmission customers require access to ATC into and through the HQT grid. HQD and HQP also use ATC into and through the HQT grid, usually to serve native load customers. Hence, to the extent HQD designates PPAs as network resources, the nature of these contracts are important in determining whether these resources are properly designated, which affects the ATC available to all HQT transmission customers.

Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THIS ELEMENT OF THE ORDER?

A. The Order does not require any specific changes to the *pro forma* OATT to reflect the requirements associated with designating PPAs as network resources.

Therefore, the revised HQT OATT has not embodied these policies. For the purposes of regulating access to the HQT grid, I recommend the Régie expressly endorse the requirements in Order 890 that specify the conditions under which PPAs can be designated as network resources.

Undesignating Network Resources for Third-Party Sales

Q. WHAT DOES IT MEAN TO UNDESIGNATE NETWORK RESOURCES FOR THIRD PARTY SALES?

A. Load-serving entities are restricted in using designated network resources (designated distributor resources in the case of HQD) to make third-party sales. While generally a designated resource can be used to make interruptible sales, if a load-serving entity wishes to make a firm third-party sale, the resource must be undesignated (see Order ¶ 1539).

According to Order 890, an undesignation is a “temporary termination” if it is requested simultaneously with a request to re-designate it at a later point in time. In other words, if the duration of the undesignation is specified at the time of undesignation request, then the undesignation is a “temporary termination”. Otherwise, the undesignation is an “indefinite termination”. ATC rights can be reestablished for temporary terminations but not for “indefinite terminations”.

Q. WHAT COMPETITIVE ISSUES ARISE WITH RESPECT TO THE UNDESIGNATION OF NETWORK RESOURCES?

A. As Order 890 states (at ¶1576):

The undesignation and redesignation requirements exists (*sic*) not only to promote reliability, but also to prevent undue discrimination, promote comparable treatment of customers, and increase the accuracy of ATC calculations.

While I agree with these conclusions, I focus my attention on the competitive implications of access to the grid that arise as a result of more accurate ATC calculations. When a network customer undesignates a portion of a designated resource to make third-party sales, the ATC that is impacted by the undesignated

portion of the resource must be recalculated for the duration of the undesignation period. This releasing of unused ATC to the market will provide other suppliers a chance to reserve the transmission capacity for participation in the wholesale market. If a network customer could retain the original network rights for the undesigned resources while also securing transmission rights to make a firm third-party sale, transmission capacity would be reserved twice for the same resource, essentially withholding the transmission capacity from the market.

Q. HOW WILL THE *PRO FORMA* 890 OATT REFLECT THE UNDESIGNATION REQUIREMENTS?

A. Order 890 requires transmission providers to update their OASIS systems to allow undesignation to be incorporated into the OASIS processes, including the release of ATC to the market as a result of any undesignation.

Q. DOES THE REVISED HQT OATT REFLECT THE ORDER 890 REQUIREMENTS REGARDING ATC CALCULATIONS?

A. HQT has revised 38.3, which addresses temporary and indefinite terminations for Native-Load Transmission Service.⁵ The changes in these sections appear to meet the requirements of the corresponding sections in the *pro forma* 890 OATT. However, the changes in this section only address certain general provisions; they do not address the important impact on ATC calculations from a network customer undesignating a network resource. The impact on ATC calculations from undesignating network resources should be addressed in Attachment C-1 of the revised HQT OATT. However, it is not specified there.

Q. IS THERE A PARTICULAR CONCERN REGARDING ATC CALCULATIONS BECAUSE OF THE WAY HQD SERVES ITS NATIVE LOAD?

A. Yes. As discussed above, HQT provides transmission service to HQD under Section IV of the HQT OATT (Native-Load Transmission Service). Native-Load

⁵ HQT also made similar revisions to section 30.3 for Network Integration Transmission Service (for which there is currently no subscribers in Québec).

Transmission Service is a network transmission service designed specifically for HQD. Part of the Native Load Transmission Service accounts for the existence of the Heritage Pool. Under the Heritage Pool arrangement, HQP uses its generating assets to supply a fixed amount of capacity and energy to the HQT grid so that HQD can serve its native load customers. HQD must procure for itself any capacity and energy requirements beyond the Heritage Pool.

In order to meet requirements of Order 890, HQP must specifically designate its individual resources to help ensure accurate ATC calculations. HQT reserves transmission for HQP to supply the Heritage Pool but must adjust ATC in instances when HQP uses the Heritage Pool resources to make firm third-party sales. If HQP is allowed to make third-party sales from units that are serving the Heritage Pool, under Order 890 reform the transmission capacity that was reserved for these units to serve the Heritage Pool should be released to the market. If it were not released, HQP would be holding transmission for the Heritage Pool as well as holding transmission for the third-party sale.

Q. HOW COULD THE 890 REFORMS BE IMPLEMENTED IN LIGHT OF THE HERITAGE POOL ARRANGEMENT?

A. To implement the Order 890 reforms, certain requirements under the existing HQT OATT can be modified. There already exists a provision in section 37.1 of the revised HQT OATT requiring HQD to make an annual report on distributor resources and resources that supply the Heritage Pool. This annual requirement is as follows:

A description of Distributor Resources (present and 10-year projection).
For each on-system resource, such description shall include:

- The size of the unit and capacity from that unit to be designated as Distributor Resource, including generating stations used to deliver heritage pool electricity and those used to supply any other Distributor Resource located in the Transmission Provider's Control Area (Section 37.1 (iii) of the revised HQT OATT).

Any off-system resource also needs to be considered by HQT in planning and operating its system (including setting ATC) and by the Régie in monitoring and regulating the network. Therefore, I recommend that section 37.1 (iv) be expanded to include the following, consistent with FERC proforma 890B section 29.2 (v):

For each off-system Network Resource, such description shall include:

- Identification of the Network Resource as an off-system resource
 - Amount of power to which the customer has rights
 - Identification of the control area from which the power will originate
 - Delivery point(s) to the Transmission Provider's Transmission System
 - Transmission arrangements on the external transmission system(s)
 - Operating restrictions, if any
 - Any periods of restricted operations throughout the year
 - Maintenance schedules
 - Minimum loading level of unit
 - Normal operating level of unit
 - Any must-run unit designations required for system reliability or contract reasons
- (Name of Transmission Provider) Open Access Transmission Tariff
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- Approximate variable generating cost (\$/MWH) for redispatch computations;

The information provided in section 37.1 (iii) and (iv) can be used to implement the undesignation process in Order 890. If HQP seeks to make a firm third-party sale from a resource or a portion of a resource identified in section 37.1 (iii) or (iv), then HQP should be required to “undesignate” the resource or the portion thereof, and this should be reported to HQT in order to update ATC calculations. For off-system distributor resources and off-system Heritage Pool resources, the inertia capacity reserved for those resources should be adjusted when the portion of those resources reserved for native load is used to make firm third-party sales.

VI. Creditworthiness

Q. WHAT ARE THE ORDER 890 REFORMS RELATING TO CREDITWORTHINESS?

A. Order 890 addresses concerns about undue discrimination in the establishing of credit standards:

We find that the transmission provider's basic credit standards significantly affect transmission service and, therefore, must be included in the pro forma OATT. This will ensure that all customers have clear information as to the credit process and standards used by a transmission provider to grant or deny transmission service and, in turn, will serve to prevent undue discrimination and eliminate a potentially significant barrier to entry in the provision of service (Order 890 ¶1656).

The *pro forma* 890 OATT Attachment L identifies six minimum requirements concerning creditworthiness procedures. These requirements include a summary of the procedure for determining the level of secured and unsecured credit, and a procedure for providing customers, on request, a written explanation for any change in credit levels or collateral requirements.

Q. WHAT HAVE YOU FOUND WITH RESPECT TO HQT'S CREDIT WORTHINESS PROCEDURES?

A. Based on my review of the credit worthiness procedures in HQT's Attachment L, I find these procedures provide discretion that may allow the opportunity for undue discrimination. This potential for undue discrimination arises in HQT's proposed methods for establishing the creditworthiness for unsecured credit limits and changes in a transmission customer's credit limit.

Certain procedures for determining whether a customer meets applicable eligibility criteria for unsecured credit are outlined in section 3 of HQT's attachment L. Notwithstanding these procedures, in section 4 of Attachment L, HQT reserves an overall right to limit credit to: "the maximum unsecured credit limit established internally and approved from time to time by the Board of Directors of Hydro Quebec, based on the credit risk level of the Customer or its Guarantor, as applicable". However, no criteria for such limits are provided, and

further discretion is allowed in reducing (without stated guidelines) the credit limits. Section 4 of HQT's Attachment L states:

The Transmission Provider shall review Credit Limits periodically, at least annually, to reflect the Customers' needs, and upon any adverse change in financial condition of the Customer or its Guarantor, if any, whether resulting in a credit rating down grade or not.

There is no mention of the criteria that would be used to determine an "adverse change" that would provide the basis for a change in the credit limit under this provision.

Similar provisions invoking significant discretion are used in outlining credit to be offered to customers requiring network upgrades (See section 11.2).

In addition, there is no procedure outlined for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements.

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

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

Q. WHAT ARE YOUR RECOMMENDATIONS?

A. First, I recommend that HQT should revise the elements discussed above that provide the potential for undue discrimination. With respect to HQT reviewing and adjusting customer credit limits HQT should be required to limit the exercise of this right to circumstances of material adverse change affecting the risk of nonpayment by the customer. HQT should establish clear criteria for how this would be done. It should be linked to the original criteria used to establish such

limits. Finally, a procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements should be added to Attachment L.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

APPENDICES

Exhibit No. RAS-1	Direct Testimony of Dr. Robert A. Sinclair
Exhibit No. RAS-2	Resume of Dr. Robert A. Sinclair
Exhibit No. RAS-3	OASIS reservation #418301