

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N^o : R-3669-2008 – Phase 2

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).

AMENDED DIRECT TESTIMONY

OF

DR. ROBERT A. SINCLAIR

On behalf of

NEWFOUNDLAND AND LABRADOR HYDRO

Original version filed June 10, 2009
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1 **I. INTRODUCTION AND SUMMARY**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS

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

5 Q. PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL
6 BACKGROUND.

7 A. I have a Ph.D. in economics from the University of Pittsburgh. My major fields
8 of expertise include industrial organization, antitrust, regulation, statistical
9 analysis, and microeconomic theory. I have been an economic consultant since
10 1993 and have provided expert testimony and reports in a number of jurisdictions
11 on matters relating to competition, prices, cost of service, and market monitoring
12 in the electric utility industry.

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

18 Q. WHAT IS YOUR ROLE AT POTOMAC ECONOMICS?

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

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

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

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

11 Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

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

18 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

19 A. I have been asked by NLH to address certain issues that arise in connection with
20 the revised Open Access Transmission Tariff (OATT) filed by Hydro-Québec
21 TransÉnergie (HQT) in this proceeding. The HQT filing is in response to the
22 2007 issuance of Order 890 by the U.S. Federal Energy Regulatory Commission
23 (FERC).¹ Order 890 is the FERC's final rule in a comprehensive and far-reaching
24 rule-making aimed at amending and clarifying the FERC *pro forma* OATT that
25 was initially established in 1996 (FERC Order 888). The *pro forma* OATT
26 establishes the open-access policies applicable to all transmission-owning utilities
27 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).

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

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

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

14 Q. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?

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

21 In accordance with the major areas of Order 890 reform, my testimony addresses
22 the following topics. Section II: Consistency and Transparency of ATC
23 Calculations; Section III: Coordinated, Open and Transparent Planning; Section
24 IV: Transmission Pricing; Section V: Non-Rate Terms and Conditions; and
25 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.

1 Q. DO YOU HAVE ADDITIONAL TESTIMONY BEYOND THESE SECTIONS?

2 A. Yes, Section VII of my testimony is an amended portion that was added in
3 September 2010 after my direct testimony was filed in June 2009. I amended my
4 testimony because HQT amended its evidence after the filing of my testimony.
5 This amended evidence includes: (HQT-12, document 1 – Judah Rose Rebuttal
6 Testimony on Appendix K issues), in June 2009; (HQT-28, document 1 – Philip
7 Q. Hanser Report on Attachment C-1 for ATC Coordination), in June 2010; and
8 (HQT-8, document 6.1 – Response to Questions 6.5 and 6.6 of Request for
9 Information No. 1 by RNCREQ and UC) in July 2010. My amended portions
10 herein address the testimony of HQT witnesses Messrs. Hanser and Rose that was
11 introduced in July 2009 and in June and July 2010.

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

15 A. In evaluating the revised HQT OATT, I will apply the standard identified in Order
16 890 to assess whether the revised HQT OATT meets the reforms. In particular, at
17 ¶ 135, the Order requires FERC-approval of rates and terms that differ from the
18 *pro forma* 890 OATT, but such rates and terms must be “consistent with or
19 superior to” the corresponding rates and terms in the Order (which includes the
20 elements of the *pro forma* 890 OATT).

21 Q. PLEASE SUMMARIZE YOUR SPECIFIC CONCLUSIONS AND
22 RECOMMENDATIONS.

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

25 **Consistency and Transparency of ATC Calculations.** As recognized by Order
26 890, the lack of consistency and transparency of Available Transfer Capability
27 (ATC) calculations across the industry has created a potential for discriminatory
28 transmission practices. Accordingly, Order 890 requires transmission providers
29 to provide details of their ATC calculations to ensure industry-wide consistency

1 and to prevent undue discrimination. Based on my analysis of the revised HQT's
2 OATT, I conclude:

- 3 • HQT has failed to specify ATC calculations for the operating horizon and
4 the planning horizon, as required in Order 890;
- 5 • Certain definitions relating to native-load capacity reservations are
6 inconsistent with Order 890;
- 7 • The lack of clarity in Attachment C-1 provides the opportunity for HQT to
8 exercise wide discretion and may result in undue discrimination. To help
9 eliminate this potential, I recommend the Régie take advantage of HQT's
10 on-going OASIS development phase by instructing HQT to hold technical
11 briefing sessions on the OASIS system and ATC processes.

12 **Coordinated, Open, and Transparent Planning.** A main element of the Order
13 890 reforms is the requirement that transmission providers adopt a coordinated,
14 open, and transparent transmission planning process that invites meaningful
15 participation by transmission customers, regulators, and other stakeholders. Order
16 890 requires transmission providers to include an attachment to their OATTs that
17 provides the details of this process (Attachment K).

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

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

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

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

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

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

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

- 24 • I recommend that ATC allocated to HQP resources supplying the Heritage
25 Pool be released to the market when these resources are making firm third-
26 party sales and that the ATC be adjusted accordingly.

- 1 • I also recommend that the reporting requirement under section 37.1 (iv) of
2 the revised HQT OATT be expanded to require a description of off-
3 system network resources. .

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

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

- 11 • I find that HQT’s creditworthiness provisions allow potential for
12 significant discretion and create the potential for undue discrimination.
13 • I recommend certain modifications to HQT’s creditworthiness procedures
14 to address these concerns.

15 **II. CONSISTENCY AND TRANSPARENCY OF ATC CALCULATIONS**

16 Q. WHAT IS THE PURPOSE OF THE 890 REFORMS AS THEY RELATE TO
17 THE “CONSISTENCY AND TRANSPARENCY OF ATC CALCULATIONS”?

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

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

26 The purpose of increasing the consistency and transparency of ATC
27 calculations is to reduce the potential for undue discrimination in the
28 provision of transmission service, specifically by reducing the opportunity
29 for transmission providers to exercise excessive discretion. We find that

1 the amount of discretion in the existing ATC calculation methodologies
2 gives transmission providers the ability and opportunity to unduly
3 discriminate against third parties. In order to minimize this discretion,
4 [Order 890] requires that all ATC components (i.e., TTC, ETC, CBM, and
5 TRM) and certain data inputs, data exchange, and assumptions be
6 consistent and that the number of industry-wide ATC calculation formulas
7 be few in number, transparent and produce equivalent results. [FERC]
8 finds that these reforms will facilitate development of a more coherent and
9 uniform determination of ATC (Order 890, ¶207).

10
11 Q. IS HQT PROPOSING TO REVISE ITS APPROACH TO ATC
12 CALCULATIONS?

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

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

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

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

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

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

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

10 While setting aside ATC for native load service is consistent with the *pro forma*
11 890 OATT, the idea embodied in the term QCRND_{firm} appears to create firm
12 rights from non-designated resources, which is not consistent with the *pro forma*
13 890 OATT.

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

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

26 There is no service in the *pro forma* 890 OATT that allows firm imports from
27 non-designated resources (so-called QCRND_{firm}) to serve native load. Firm
28 imports from non-designated resources must be arranged under the point-to-point
29 provisions of the tariff. The firm transmission product has only a single delivery

1 point; it is not suited to serving dispersed loads. The *pro forma* 890 OATT
2 provides for a secondary transmission service product for use if the load serving
3 entity intends to serve native load from a non-designated resource

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

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

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

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

20 Q. IS THIS NOT SIMPLY A QUESTION OF TERMINOLOGY?

21 A. No. These variables are used in the ATC equations to represent existing
22 transmission commitments to serve native load. While it is consistent with the
23 *pro forma* 890 OATT to allocate transmission capacity to native load before
24 calculating ATC, HQT’s current use of the transmission subclass QCRD is being
25 used to reserve transmission capacity for non-native-load transmission customers.
26 For example, HQT currently imports power from New Brunswick with a network
27 service reservation under a subclass of service “QC-RD” (See OASIS reservation
28 #418301 attached as RAS-3). This situation appears to be inconsistent with the
29 *pro forma* OATT because no network service agreement has been executed
30 between HQT and HQT. In a separate Régie case, (Complaints P-110-1565 –

1 1566-1597-1678-1692), NLH asked HQT about this particular reservation (NLH
2 Information Request No. 3,3b). HQT acknowledged that HQP made the
3 reservation and that HQP was not a native-load transmission service customer.
4 HQT stated, “at the time reservation #418301 was registered, [HQD] did not have
5 the ability to write in the Transmission Provider’s OASIS system. The reservation
6 was therefore registered by HQM [the OASIS code for HQP].”

7 However, this appears to be more than a technical OASIS issue. HQP is the
8 purchaser of the resources from New Brunswick associated with the reservation.
9 This suggests that even if HQD had the ability to use OASIS at the time, it would
10 have been improper for HQD to use native-load transmission service for a
11 resource under HQP’s control. Hence, it appears HQP is using native-load
12 transmission service to deliver capacity and energy under its purchase contract.
13 The Régie should require HQD to clarify this situation and bring the
14 circumstances into conformity with the HQT tariff. In particular, if the New
15 Brunswick purchase is a designated distributor resource, then the native-load
16 service should be used to reserve transmission (and HQD should designate the
17 resources as such, in accordance with 38.1 and 38.2 of the HQT OATT). If the
18 New Brunswick purchase is not a distributor resource, point-to-point service
19 should be used to reserve import capability. Native-load transmission service
20 should not be used by market participants that do not have Native Load
21 Transmission Service agreements. In addition, non-load-serving entities should
22 not benefit from using subclasses associated with the service of native load.

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

25 A. Generally, Attachment C-1 is meant to contain a significant amount of detailed
26 information in order to provide the desired clarity and transparency of ATC
27 calculations. However, in its current state, the processes are not clear. As
28 indicated, mathematical algorithms for critical products are not provided and there
29 is the mixing of native-load and point-to-point concepts associated with the “QC”

1 service class. As explained in the next subsection, there should be a way to
2 release capacity to the market when a distributor resource (or a Heritage Pool
3 resource) makes a firm third-party sale. That involves careful consideration and
4 is not clearly reflected in Attachment C-1.

5 Because of the lack of clarity and the complexity of the issues involved, I
6 recommend the Régie instruct HQT to hold technical sessions with stakeholders
7 to explain the OASIS system in the context of the revised HQT OATT. These
8 sessions would provide transmission customers and regulators an opportunity to
9 gain a better understanding of the proposed ATC calculations while also
10 facilitating customer and regulator input. Such stakeholder processes and
11 working groups are standard practices in neighboring transmission systems, like
12 the New York ISO and the Midwest ISO.

13 **III. COORDINATED, OPEN, AND TRANSPARENT PLANNING**

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

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

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

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

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

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

8 In order to provide for more comparable open access transmission service,
9 limit the potential for undue discrimination and anticompetitive conduct,
10 and satisfy its statutory responsibilities under section 217 of the FPA
11 [concerning infrastructure], the [FERC] proposed to amend the pro forma
12 OATT to require coordinated, open, and transparent transmission planning
13 on both a local and regional level (Order at ¶426).

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

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

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

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

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

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

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

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

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

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

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

36 A. As indicated above, Order 890 (at ¶437) requires that each transmission provider
37 include an attachment to its OATT that documents the existence of a coordinated

1 and regional planning process that complies with principles established in the
2 Order. Transmission providers with existing planning processes must show such
3 processes are “consistent with or superior to” the requirements in the Order.

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

6 A. No. In submitting its revised OATT in this case, HQT indicated that its current
7 transmission planning process adequately addresses the concern expressed in
8 Order 890 with regard to transmission planning and, accordingly, HQT concluded
9 that it was not necessary to include an OATT Attachment containing provisions
10 for transmission planning consistent with Order 890.

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

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

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

25 Aux États-Unis, la pertinence d'ajouter un processus de planification
26 ouvert et transparent, l'appendice K de l'OATT *pro forma*, vise
27 principalement à combler la déficience d'investissements en
28 infrastructure de transport (HQT Statement Accompanying Request).
29

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

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

12 The Commission also affirms the finding in the NOPR that Order No.
13 888 does not contain sufficient protections to guard against undue
14 discrimination in transmission system planning. Without adequate
15 coordination and open participation, market participants have minimal
16 input or insight into whether a particular transmission plan treats all
17 loads and generators comparably. To ensure that truly comparable
18 transmission service is provided by all public utility transmission
19 providers, including RTOs and ISOs, we amend the pro forma OATT to
20 require coordinated, open, and transparent transmission planning on both
21 a sub-regional and regional level.

22 Consider also ¶422:

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

30 And consider ¶425:

31 Taken together, this lack of coordination, openness, and transparency
32 results in opportunities for undue discrimination in transmission
33 planning. Without adequate coordination and open participation, market
34 participants have no means to determine whether the plan developed by
35 the transmission provider in isolation is unduly discriminatory.
36

37 Given these express concerns in the Order about discriminatory conduct, HQT's
38 claim that the Order 890 planning requirement is primarily aimed at infrastructure

1 development is misleading. Indeed, eliminating and preventing discriminatory
2 conduct is emphasized in the Order as much as if not more than the state of grid
3 investment. Accordingly, stimulating investment in the U.S. transmission
4 network is neither the sole nor even necessarily the overriding concern being
5 addressed by Order 890.

6 There is also a reciprocity issue involved if HQT fails to develop coordinated
7 planning while transmission providers in the U.S. do so. Even if it were true that
8 the planning requirement was primarily a matter of stimulating transmission
9 investment in the U.S., transmission investments have critical market impacts and
10 provide general competitive benefit. As a result, if reform of transmission
11 planning in the U.S. makes it easier for Québec suppliers to sell there because of
12 increased transmission capacity, having in place a coordinated planning process
13 allows HQT to reciprocate, even if, as HQT claims, no increase in Québec
14 capacity is presently needed.

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

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

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

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

26 As described above, a key objective in Order 890 is to prevent undue
27 discrimination. Prior to open access, many vertically-integrated systems achieved
28 admirable levels of reliability. However, this was unrelated to whether
29 competitors were able to gain access to transmission service on a non-
30 discriminatory basis. Reliability provides no indication that a system is
31 conforming to principles of non-discrimination so it is not a relevant

1 consideration as to the whether or not HQT meets the transmission planning
2 reform under Order 890.

3 Q. DOES HQT'S FILING ADDRESS DISCRIMINATION?

4 A. Yes. In the same quoted passage, HQT, also states that the regulatory regime in
5 Québec operates to prevent undue discrimination. HQT goes on to explain that
6 the Régie has the regulatory authority to examine and approve all transmission
7 projects and that for projects with cost greater than \$25 million, a special
8 authorization is required. This process is similar to the processes used in the US
9 to approve system expansions and upgrades.

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

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

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.

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

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

9 A coordinated planning process is superior to a regulatory proceeding because
10 stakeholders are involved at a much earlier stage and are provided critical
11 information. In a regulatory proceeding, the transmission owner conducts the
12 planning studies prior to proposing the projects to regulators. Once these are
13 unveiled at the regulatory proceeding, transmission customers and other
14 stakeholders are then provided the results, which typically are summary in nature.
15 Transmission customers gaining access to underlying modeling and data requires
16 information requests.

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

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

25 Q. WHY IS THE INFORMATION REQUEST PROCESS CUMBERSOME?

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

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

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

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

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

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

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

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

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

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

29 HQT responded:

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

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

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

11 Unfortunately, individuals experienced in litigation are familiar with this
12 frustration. These are only simple and clear examples of the disadvantage that
13 transmission customers can experience when trying to use regulatory proceedings
14 as a way to protect their interests in the transmission planning process. Of course,
15 unreasonable responses to information requests can be appealed and litigated.
16 However, this tends to delay proceedings and while a just outcome may prevail,
17 using litigation as a means to exchange information is far less efficient than a
18 coordinated, open process that serves to avoid after-the-fact disputes.

19 Q. IS THERE ANOTHER REASON LITIGATION BEFORE RÉGIE IS INFERIOR
20 TO A COORDINATED PLANNING PROCESS?

21 A. Yes. The litigation process also separates the technical experts by requiring
22 communication through attorneys as opposed to direct discussion. A coordinated,
23 open process would bring together directly the transmission provider's experts
24 with the experts of the transmission customers and other stakeholders.

25 Q. HAVE TRANSMISSION CUSTOMERS BEEN ADVERSELY AFFECTED IN
26 QUÉBEC BY THE LACK OF A COORDINATED, OPEN, AND
27 TRANSPARENT PLANNING PROCESS?

28 A. Yes. In January 2006, NLH made a transmission service request for transmission
29 long-term service from the proposed Lower Churchill project into Ontario, New
30 England, New York, and New Brunswick. In the absence of transparency in

1 HQT's planning process, NLH, with no guidance or insight from the transmission
2 provider, had to request that a range of capacity bookings be studied. A more
3 open and transparent planning process would have enabled NLH to make its
4 transmission service request from a more informed perspective, rather than having
5 to request specific detailed information during the system impact study itself.
6 Furthermore, a more open planning process would allow the transmission
7 customer to assess the results of the system impact studies more fully. NLH has
8 been adversely affected by the absence of transparency and, as result, it elected to
9 seek redress at the Régie in filing several complaints.

10 Q. ARE YOU AWARE OF CIRCUMSTANCES THAT INDICATE AN ABSENCE
11 OF OPENNESS IN HQT'S PLANNING PROCESS?

12 A. Yes, when NLH sought to intervene in the Régie investment proceeding (R-3696-
13 2009), HQT initially objected. Among several objections, HQT stated:

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

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

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

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

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

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

- 1 a) the process for consulting with customers and neighboring
2 transmission providers;
- 3 b) the notice procedures and anticipated frequency of meetings or
4 planning related communications;
- 5 c) a written description of the methodology, criteria, and processes used
6 to develop transmission plans;
- 7 d) the method of disclosure of transmission plans and related studies and
8 the criteria, assumptions and data underlying those plans and studies;
- 9 e) the obligations of and methods for customers to submit data to the
10 transmission provider;
- 11 f) the dispute resolution process;
- 12 g) the transmission provider's study procedures for economic upgrades
13 to address congestion or the integration of new resources; and
- 14 h) the relevant cost allocation procedures or principles.
- 15

16 **IV. TRANSMISSION PRICING (IMBALANCE SERVICE)**

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

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

20 Q. WHAT ARE THE IMBALANCE POLICIES THAT YOU ADDRESS?

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

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

28 A. It is not clear from the letter exactly why this agreement was needed and what the
29 implications are for other transmission customers. It appears the transmission
30 providers agree that IESO can address balancing concerns itself in the event an

1 Ontario generator dispatches to HQT. My conclusion is only based on reading the
2 letter. In order to find out more, NLH issued an information request. Here is the
3 data request (NLH request 11.1):

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

6 HQT response:

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

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

14 This response was not helpful. Régie decision D-2009-056 is an order requiring
15 HQT to file revised imbalance Schedules (Schedules 4 and 5). This filing was
16 made on May 29, 2009 and I am informed by counsel that it contained no
17 explanation of the special agreement with IESO.

18 Q. DO YOU OBJECT TO THE AGREEMENT?

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

26

27 **V. NON-RATE TERMS AND CONDITIONS**

28 Q. WHAT IS THE PURPOSE OF THIS SECTION?

29 A. In this section, I address certain non-rate terms and conditions established in
30 Order 890 that have particular significance to HQT. The first issue involves

1 policies associated with designating power purchase agreements (PPAs) as
2 network resources (as explained below, these are called “distributor resources” in
3 Québec). In particular, Order 890 clarifies that a PPA may be designated as a
4 network resource provided it is not interruptible for economic reasons. The
5 second issue I address is the Order 890 policy associated with undesignating
6 network resources to enable third-party sales from such resources.

7 ***PPAs as Designated Network Resources***

8 Q. WHAT IS MEANT BY DESIGNATED NETWORK RESOURCES?

9 A. Load-serving entities that integrate load and resources purchase network
10 transmission service (called Network Integration Transmission Services under the
11 *pro forma* OATT). In Québec, native-load customers are served by HQD
12 primarily from resources that comprise the “Heritage Pool”. To integrate the
13 Heritage Pool resources with its load centers, HQD uses network-type service.
14 Under the HQT OATT, this transmission service used by HQD is called Native-
15 Load Transmission Service. Native-Load Transmission Service is analogous to
16 the Network Integration Transmission Service in the *pro forma* OATT.
17 Resources used by HQD to serve its native load are called “distributor resources”,
18 as opposed to “network resources” under the *pro forma* OATT.

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

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.

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

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

11 The portion of Order 890 addressing the designation of PPAs as network
12 resources essentially serves as a vehicle for clarifying FERC policy. Ever since
13 the concept of network service was introduced in the 1990s, FERC has been
14 confronted with a range of issues associated with the appropriate nature of
15 designated network resources, especially how PPAs may be designated as
16 network resources. The pre-890 *pro forma* OATT already requires load-serving
17 entities to identify key characteristics of any PPA that is designated as a network
18 resource, including source of supply, the control area location of the supply,
19 transmission arrangements, and delivery point(s) to the transmission provider’s
20 transmission system (see Section 29 of the *pro forma* 890 OATT).

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

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

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

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

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

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

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

18 Thus, as of the effective date of this Final Rule, power purchase
19 agreements designated as network resources may only contain LD
20 provisions that are of the "make whole" type. Conversely, power
21 purchase agreements containing LD provisions that provide penalties of a
22 fixed amount, that are capped at a fixed amount, or that otherwise do not
23 require the seller to pay an aggrieved buyer the full cost of replacing
24 interrupted power, are not acceptable.
25

26 Q. WOULD THE ORDER REQUIREMENT APPLY TO EXISTING
27 AGREEMENTS?

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

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

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

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

14 A. The Order does not require any specific changes to the *pro forma* OATT to reflect
15 the requirements associated with designating PPAs as network resources.
16 Therefore, the revised HQT OATT has not embodied these policies. For the
17 purposes of regulating access to the HQT grid, I recommend the Régie expressly
18 endorse the requirements in Order 890 that specify the conditions under which
19 PPAs can be designated as network resources.

20 ***Undesignating Network Resources for Third-Party Sales***

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

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

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

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

9 A. As Order 890 states (at ¶1576):

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

14 While I agree with these conclusions, I focus my attention on the competitive
15 implications of access to the grid that arise as a result of more accurate ATC
16 calculations. When a network customer undesignates a portion of a designated
17 resource to make third-party sales, the ATC that is impacted by the undesignated
18 portion of the resource must be recalculated for the duration of the undesignation
19 period. This releasing of unused ATC to the market will provide other suppliers a
20 chance to reserve the transmission capacity for participation in the wholesale
21 market. If a network customer could retain the original network rights for the
22 undesignated resources while also securing transmission rights to make a firm
23 third-party sale, transmission capacity would be reserved twice for the same
24 resource, essentially withholding the transmission capacity from the market.

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

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

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

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

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

14 A. Yes. As discussed above, HQT provides transmission service to HQD under
15 Section IV of the HQT OATT (Native-Load Transmission Service). Native-Load
16 Transmission Service is a network transmission service designed specifically for
17 HQD. Part of the Native Load Transmission Service accounts for the existence of
18 the Heritage Pool. Under the Heritage Pool arrangement, HQP uses its generating
19 assets to supply a fixed amount of capacity and energy to the HQT grid so that
20 HQD can serve its native load customers. HQD must procure for itself any
21 capacity and energy requirements beyond the Heritage Pool.

22 In order to meet requirements of Order 890, HQT must specifically designate its
23 individual resources to help ensure accurate ATC calculations. HQT reserves
24 transmission for HQP to supply the Heritage Pool but must adjust ATC in
25 instances when HQP uses the Heritage Pool resources to make firm third-party
26 sales. If HQP is allowed to make third-party sales from units that are serving the
27 Heritage Pool, under Order 890 reform the transmission capacity that was

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

1 reserved for these units to serve the Heritage Pool should be released to the
2 market. If it were not released, HQT would be holding transmission for the
3 Heritage Pool as well as holding transmission for the third-party sale.

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

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

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

13 - The size of the unit and capacity from that unit to be designated as
14 Distributor Resource, including generating stations used to deliver
15 heritage pool electricity and those used to supply any other Distributor
16 Resource located in the Transmission Provider's Control Area (Section
17 37.1 (iii) of the revised HQT OATT).

18

19 Any off-system resource also needs to be considered by HQT in planning and
20 operating its system (including setting ATC) and by the Régie in monitoring and
21 regulating the network. Therefore, I recommend that section 37.1 (iv) be
22 expanded to include the following, consistent with FERC proforma 890B section
23 29.2 (v):

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

- 26 • Identification of the Network Resource as an off-system
27 resource
- 28 • Amount of power to which the customer has rights
- 29 • Identification of the control area from which the power will
30 originate
- 31 • Delivery point(s) to the Transmission Provider's
32 Transmission System
- 33 • Transmission arrangements on the external transmission
34 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
Original Sheet No. - 104 -
 - 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

1 procedure for providing customers, on request, a written explanation for any
2 change in credit levels or collateral requirements.

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

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

10 Certain procedures for determining whether a customer meets applicable
11 eligibility criteria for unsecured credit are outlined in section 3 of HQT's
12 attachment L. Notwithstanding these procedures, in section 4 of Attachment L,
13 HQT reserves an overall right to limit credit to: "the maximum unsecured credit
14 limit established internally and approved from time to time by the Board of
15 Directors of Hydro Quebec, based on the credit risk level of the Customer or its
16 Guarantor, as applicable". However, no criteria for such limits are provided, and
17 further discretion is allowed in reducing (without stated guidelines) the credit
18 limits. Section 4 of HQT's Attachment L states:

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

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

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

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

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

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

11 Q. WHAT ARE YOUR RECOMMENDATIONS?

12 A. First, I recommend that HQT should revise the elements discussed above that
13 provide the potential for undue discrimination. With respect to HQT reviewing
14 and adjusting customer credit limits HQT should be required to limit the exercise
15 of this right to circumstances of material adverse change affecting the risk of
16 nonpayment by the customer. HQT should establish clear criteria for how this
17 would be done. It should be linked to the original criteria used to establish such
18 limits. Finally, a procedure for providing customers, upon request, a written
19 explanation for any change in credit levels or collateral requirements should be
20 added to Attachment L.

21 **VII. RESPONSE TO HQT'S AMENDED EVIDENCE**

22 Q. WHAT IS THE PURPOSE OF YOUR AMENDED TESTIMONY?

23 A. NLH asked me to address certain issues that HQT raised in its amended evidence
24 filed in July 2009 and in June and July 2010. This amended evidence includes:
25 (HQT-12, document 1 – Judah Rose Rebuttal Testimony on Appendix K issues),
26 in June 2009; (HQT-28, document 1 – Philip Q. Hanser Report on Attachment C-
27 1 for ATC Coordination), in June 2010; and (HQT-8, document 6.1 – Response to

1 Questions 6.5 and 6.6 of Request for Information No. 1 by RNCREQ and UC) in
2 July 2010.

3 In particular, NLH asked me to address the ATC coordination and data exchange
4 that is the subject addressed by HQT witness Philip Hanser. NLH also asked me
5 to comment on certain information provided by HQT witness Judah Rose on
6 Appendix K issues.

7 Q. PLEASE SUMMARIZE YOUR TESTIMONY AND CONCLUSIONS.

8 A. In subsection A, I address Mr. Hanser's testimony. Mr. Hanser sponsors
9 testimony supporting HQT's procedures that are proposed for Attached C-1 to the
10 revised HQT OATT. Attachment C-1 provides the details of HQT's Available
11 Transmission Capacity ("ATC") calculations. The proposed procedures to which
12 Mr. Hanser testifies are meant to satisfy "coordination and data exchange"
13 provisions of Order 890. I address two aspects of the proposed coordination and
14 data exchange. First, the procedures proposed by HQT are a simple
15 "harmonization" process that does not satisfy the coordination or the data
16 exchange principles in Order 890. The harmonization simply requires HQT to
17 adopt the ATC value calculated by an adjacent system if the ATC value
18 calculated by that system is lower than the corresponding value calculated by
19 HQT. On the other hand, the Order 890 requirements envision a more meaningful
20 data exchange that includes participation by transmission customers and
21 introduces transparency to the underlying ATC calculations. I propose HQT
22 develop more a meaningful exchange process that will allow adjacent systems to
23 evaluate the basis for HQT ATC values.

24 The second aspect of the proposed coordination and data exchange procedures
25 relate to the harmonization process itself. This process can lead to undue
26 discrimination in instances when the HQT ATC values decline and the interface
27 becomes oversubscribed. In such a case, HQT has the incentive to allocate the
28 scarce capacity to its affiliate, thereby excluding competitors and providing
29 competitive advantages to its affiliate. I propose that HQT include safeguards in

1 the revised HQT OATT to ensure that the harmonization process cannot be used
2 to discriminate against any transmission customer.

3 In subsection B, I address the additional testimony provided by Mr. Rose in
4 response to certain Information Requests, wherein he expands on his opinion
5 relating to Appendix K issues. In particular, he concludes that a lack of
6 transmission congestion addresses Appendix K non-discrimination objectives.
7 Appendix K was established in Order 890 to achieve two main objectives. One
8 was to integrate individual utility planning activities into a regional process. The
9 second was to prevent undue discrimination through increased participation in the
10 planning process by transmission customers. With respect to the second of these
11 objectives, Mr. Rose suggests that the absence of congestion is a “key aspect” in
12 addressing discrimination. I explain why discrimination does not depend on
13 whether or not congestion is present.

14 | **A. HQT WITNESS PHILIP HANSER**

15 | Q. WHAT ISSUES DOES MR. HANSER ADDRESS?

16 | A. Mr. Hanser addresses the issue of ATC harmonization proposed by HQT in its
17 Attachment C-1 to the revised HQT OATT. The harmonization process (called
18 “least-common denominator approach” by Mr. Hanser), is a simple process
19 whereby HQT will lower its ATC value when the corresponding ATC value on
20 the neighboring system is lower.

21 Mr. Hanser testifies that this process satisfies the “ATC Coordination and data
22 exchange” requirement of FERC Order 890. He concludes that these procedures
23 “specifically deal with the issue of coordinating and exchanging data and
24 assumptions with neighboring systems to achieve consistent ATC values” (Export
25 Report of Philip Hanser at ¶16). Mr. Hanser’s testimony can leave the impression
26 that there is to be some active exchange of information regarding the underlying
27 modeling and assumptions regarding the calculation of HQT ATC values and that
28 this exchange helps ensure consistency in methodologies between HQT and
29 neighboring systems. In fact, in my initial review of his testimony I was

1 anticipating a discussion as to how exactly this would occur. However, what Mr.
2 Hanser refers to as “coordinating and exchanging data and assumptions” (*Id.*),
3 simply means that HQT will lower its ATC value in instances where the
4 corresponding ATC value on the neighboring system is lower. There is no formal
5 exchange of data or assumptions regarding the underlying process for establishing
6 the ATC value as envisioned in Order 890. Here is the text of Order 890 with
7 regard to data exchange (§310):

8 The Commission adopts the NOPR proposal and directs public utilities,
9 working through NERC, to revise the related MOD reliability standards to
10 require the exchange of data and coordination among transmission
11 providers and, working through NAESB, to develop complementary
12 business practices. The following data shall, at a minimum, be exchanged
13 among transmission providers for the purposes of ATC modeling: (1) load
14 levels; (2) transmission planned and contingency outages; (3) generation
15 planned and contingency outages; (4) base generation dispatch; (5)
16 existing transmission reservations, including counterflows; (6) ATC
17 recalculation frequency and times; and (7) source/sink modeling
18 identification.

19 In my opinion, the HQT harmonization process, which envisions comparing the
20 final ATC calculation, does not meet the Order 890 standard.

21 In this regard, it also unclear why that Mr. Hanser would claim (at §28) that
22 HQT’s harmonization approach does not rely on complex ATC calculations.
23 HQT will still have to calculate ATC values using power flow models, for
24 example see response to NLH Information Request to Mr. Hanser #7c. The fact
25 that the HQT ATC value will be compared to the neighboring ATC value does not
26 eliminate the need for a calculation of an initial ATC value that requires all of the
27 attendant system modeling.

28 In fact, harmonization is the second step in the coordination and data exchange
29 process. The first step is ensuring accurate ATC values. This process is
30 facilitated by data exchange. An exchange of inputs and assumptions may
31 increase one of the two ATC values on a border. If this data exchange process
32 changes the more restrictive of the two values, the ATC will increase and the
33 underlying value of the transmission assets will be unlocked.

1 Accordingly, I recommend that HQT commit to developing a data exchange with
2 neighboring systems, including synchronously-interconnected Labrador, that
3 meets the minimum requirements of Order 890.

4 Q. HOW CAN THE ATC HARMONIZATION LEAD TO UNDUE
5 DISCRIMINATION?

6 A. The harmonization proposed by HQT permits HQT to adopt the ATC value
7 calculated by an adjacent system if the ATC value calculated by that system is
8 lower than the corresponding value calculated by HQT. When this process results
9 in a decline in the ATC value on the HQT system, the interface may be
10 “oversubscribed.” This means there would be more firm commitments on the
11 interface than there is firm transmission capacity. The potential for undue
12 discrimination exists because the transmission owner must allocate the smaller
13 amount of capacity among the competing customers with existing transmission
14 service rights. In the case of HQT, there is an affiliated entity, Hydro Quebec
15 Production (HQP), that has a strong interest in retaining its full capacity rights.
16 HQT thus has the incentive to allocate the scarce interface capacity to its affiliate.

17 Q. DOES THE 890 PRO FORMA OATT ADDRESS OVERSUBSCRIBED
18 TRANSMISSION?

19 A. Yes, section 13.6 of the 890 pro forma OATT provides that all firm reservations
20 to be treated equally when firm curtailments are required to maintain system
21 reliability. In fact, section 13.6 of the 890 pro forma OATT requires a pro rata
22 curtailment of all firm reservations. FERC has interpreted this to mean that if
23 ATC declines because of events that occur after the reservation of firm capacity,
24 then transmission providers should look to curtailment provisions in the OATT
25 (i.e., section 13.6) to allocate the smaller amount among competing uses:

26 If constraints arise after a transmission provider enters into a long-term
27 agreement with the transmission customer ... the obligation is on the

1 transmission provider to either curtail service to all affected customers
2 or build more capacity to relieve the constraint.⁶
3

4 Because a reduction in ATC as a result of applying the harmonization process
5 cannot be offset by building new transmission (because the reduction is the result
6 of a lower ATC on an adjacent system), the appropriate action would be
7 application of firm curtailment procedures in the revised HQT OATT (i.e.,
8 Section 13.6), which implies *pro rata* reductions.

9 Q. HOW COULD THESE PROVISIONS STILL ALLOW HQT TO ACT TO
10 FAVOR ITS AFFILIATE?

11 A. The provisions of the revised HQT OATT and the FERC's relevant orders would
12 provide a straightforward way to address oversubscription resulting from the
13 harmonization process: the scarce capacity is allocated *pro rata* among existing
14 firm customers. Uncertainty arises when one or more of the firm transmission
15 customers seek to exercise rollover rights under Section 2.2 of the revised HQT
16 OATT. Under the current HQT OATT, rollover rights apply to any firm contract
17 at least one-year in duration. Under the revised HQT OATT, and consistent with
18 the 890 *pro forma* OATT, the roll over rights are attached to contracts of at least
19 five years in duration.

20 Q. WHY CAN UNCERTAINTY ARISE WHEN ROLL OVER RIGHTS ARE
21 INVOLVED IN THE HARMONIZATION PROCESS?

22 A. This uncertainty arises because of recent actions by HQT on the HQT interface
23 with ISO-NE. As a result of the adoption of the harmonization policy, HQT
24 reduced the firm TTC on the interconnection to 1,200 MW to reflect ISO-NE's
25 limit for imports from HQT. The export capacity thus became oversubscribed.
26 HQT refused a request by Énergie Brookfield Marketing (Brookfield) to rollover
27 its transmission rights and, instead, HQT allocated all of the interface capacity to
28 its affiliate, HQP. This creates uncertainty for any customer that has transmission

⁶ *Excelon Generating Co., LLC v. Southwest Power Pool*, Docket No. EL02-86-001, Order Denying Rehearing. November 22, 2002, ¶15.

1 reserved on an HQT interface because harmonization can create an over-
2 subscribed interface and the customer may face the situation like Brookfield's
3 where its rollover rights are not honored.

4
5 Q. HOW SHOULD THE REVISED HQT OATT REFLECT THE TREATMENT
6 OF ROLLOVER RIGHTS IN THE HARMONIZATION PROCESS?

7 A. HQT should adopt the policy on rollover rights used by FERC. As indicated
8 above, FERC has required transmission providers to maintain adequate
9 transmission capability to accommodate transmission customers either by
10 building adequate capacity or curtailing customers in a non-discriminatory
11 manner, i.e., *pro rata*.⁷ Because HQT cannot be expected to build new capacity
12 on the neighboring system, if HQT lowers its ATC as a result of the
13 harmonization process and this results in an oversubscribed interface, HQT must
14 invoke the curtailment procedures under section 13.6 of the revised HQT OATT
15 at the time the harmonization occurs.

16 In this process, firm transmission customers with rollover rights would be
17 allocated their *pro rata* share of the reduced capacity. When the transmission
18 term of the firm transmission customers with rollover right expires, the customers
19 can invoke their rollover rights for the portion of the capacity allocated in
20 accordance with the firm curtailment, i.e. its *pro rata* share.

21

22 B. **HQT WITNESS JUDAH ROSE**

23 Q. WHAT ISSUE DO YOU ADDRESS IN MR. ROSE'S TESTIMONY?

24 A. In response to an Information Request, Mr. Rose expands on his testimony
25 regarding the applicability of Order 890 Appendix K to the HQT system. In
26 particular, see Mr. Rose's July response to Information Request No. 1 questions

⁷ *Id.*

1 6.5 and 6.6 by Regroupment National des Conseils Régionaux de l'environnement
2 du Québec and Union des Consommateurs ("July IR Response").

3 Appendix K sets out the regional planning requirements of Order 890. In his
4 direct testimony and in his July IR Response, Mr. Rose states that there are two
5 main motivations for FERC proposing Appendix K:

6 [(1)] acute U.S. transmission problems could, in part, be solved by
7 improved planning. The problems included: (1) insufficient
8 transmission investment, (2) significant transmission congestion, (3)
9 reliability problems and (4) the lack of coordination;" [and]

10 [(2)] inadequate planning might facilitate discrimination by transmission
11 providers." (July IR Response at ¶2(b)).

12 While Mr. Rose's direct testimony and his July IR Response have concentrated
13 considerable energy on the first of these two objectives, the issue of how
14 Appendix K is meant to address discrimination has not been developed.

15 The only reference to how the discrimination concerns are addressed on the HQT
16 system is in Mr. Rose's July IR Response:

17 A key aspect of potential discrimination discussed in Order 890 is the
18 existence of "significant and recurring congestion". [footnote to Order 890
19 ¶¶534-5] Thus, it is necessary to understand whether there is "significant
20 and recurring congestion" within the TransEnergie Interconnection when
21 assessing the potential for discrimination and the type of coordinated,
22 open and transparent transmission planning needed.

23 In essence, the testimony is asserting that a lack of congestion translates to a lack
24 of discrimination. I do not agree.

25 Discrimination can arise even when congestion is not present. Mr. Rose himself
26 describes discrimination scenarios that do not appear to require congestion:

27 In theory, a transmission provider ("TP") could discriminate by favoring
28 affiliated generation sources in structuring the grid and grid access so
29 that it unfairly burdens competitors with costs for transmission access or
30 denies them access with comparable terms and conditions available to

1 the TP or affiliates. (Response to NLH Information Request to Mr.
2 Judah Rose, Question 2(a).)

3 I agree that the potential for discrimination is a concern in the United
4 States and that it may be a concern in the rest of North America; my
5 report focuses on the situation in Quebec. (Response to NLH
6 Information Request to Mr. Judah Rose, Question 2(b).)

7 I have not conducted a review of the historical facts and evaluated
8 whether TransÉnergie has used its transmission planning to discriminate
9 against unaffiliated companies in the past. The analysis I performed,
10 which is contained in my July 3rd, 2009 Testimony and my July 13,
11 2010 Response, has not revealed any circumstances in which
12 TransÉnergie would have used its transmission planning to discriminate
13 against unaffiliated companies. (Response to NLH Information Request
14 to Mr. Judah Rose, Question 2(c).)

15 Theoretically, and without regards to preventive measures, TP can offer
16 service that is not comparable to what it provides itself or affiliated
17 companies, or deny service to others. (Response to NLH Information
18 Request to Mr. Judah Rose, Question 6(a).)

19 The unfair allocation of upgrade costs may be caused by various factors.
20 The offer of a service by the TP that is not comparable to what it
21 provides affiliated companies.... may contribute to unfair allocation of
22 upgrade costs (Response to NLH Information Request to Mr. Judah
23 Rose, Question 7(a).)

24 I do not find that executing the various discriminatory strategies identified by Mr.
25 Rose requires “significant and recurring” congestion. It only requires a
26 transmission provider with the incentive to favor its affiliate and the means to do
27 so. As a result, the discrimination concerns underpinning Appendix K which I
28 discussed above, will remain unaddressed if the provisions in Appendix K are not
29 included in the revised HQT Tariff.

30 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

31 A. Yes.

1 APPENDICES

2

3 Exhibit No. RAS-1 Direct Testimony of Dr. Robert A. Sinclair

4 Exhibit No. RAS-2 Resume of Dr. Robert A. Sinclair

5 Exhibit No. RAS-3 OASIS reservation #418301