

# UNOFFICIAL TRANSLATION OF BROOKFIELD COMPLAINT

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In support of its complaint and its request of order to safeguard, the complainant Brookfield Energy Marketing Inc. respectfully submits the following:

## Part I – Introduction

1. Brookfield Energy Marketing Inc (EMI) is a customer of the electricity transmission service provided by Hydro-Quebec (HQ) in its role of transmission provider.
2. EMI is a participant in the wholesale electricity markets of Quebec, New Brunswick, Ontario and a number of American states, including those in the North-East.
3. To this extent, EMI sells and buys products associated with electricity, such as energy, power, and renewable energy credits in the aforementioned markets.
4. EMI is the second largest customer of the transmission provider in terms of point-to-point services as indicated in Part II of the Quebec OATT.
5. EMI has submitted with the transmission provider, using the appropriate methods, total reservation requests totaling a capacity of 306 MW for firm, long-term point-to-point transmission service on the MATI-HQT-NE path and ON-HQT-NE
6. this complaint concerns the exercise of the rights of EMI with regard to these firm transmission services, such that will be shown hereafter
7. On the 25<sup>th</sup> of February EMI gave the transmission service provider notice of the complaint concerning the current request in accordance with the Régie's procedures and on the 11<sup>th</sup> of March 2010 received an end of non-receipt on the part of the transmission provider which shows the following:

## Part II – The problem and the conclusions researched and reached by EMI

8. In 2007, EMI submitted, in accordance with the Quebec OATT, a request for firm, long-term point-to-point transmission services
9. According to the OATT as approved by the Régie, the transmission provider is required to permit the continuation of the transmission service at the expiration of the initial term or the complete renewal of the reservation or renewal on short notice of the reservation – refer to article 2.2 of the OATT
10. EMI gave notice of continuation of service for the 2010-2011 period in the appropriate manner

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11. The Transmission provider subsequently informed EMI that it had refused its request for renewal on the grounds that it would no longer have the available capacity requested by EMI as of April 1, 2010
12. EMI would like to submit to the Régie a complaint against the transmission provider under the terms of articles 94 and ss of the *Loi sur la Régie de l'énergie* (L.R.Q., c R-6.91) after its refusal to renew as was requested the long-term point-to-point transmission services subscribed by EMI on the MATI-HQT-NE path
13. EMI would also like to submit to the Régie a request for order to safeguard the rights of EMI regarding the transmission services which, according to the transmission provider, will end April 1, 2010.
14. EMI considers that the transmission provider, by its refusal to renew the subscribed transmission services, acts irregularly, without right and in contravention of its contractual obligations under the OATT towards EMI
15. EMI, on the faith of the engagements of the transmission provider as for the nature and the range of the associated rights to the transmission services in question, has assumed obligations of supplying to third parties and without the immediate intervention of the Régie, will experience certain and irreparable damage
16. EMI requests in the framework of the complaint procedure to be heard as soon as possible and in an urgent manner under the order to safeguard in a manner such that a decision can be made before March 31, 2010
17. For the time being, EMI is asking the Régie to order the transmission provider to allow EMI to continue to use the firm point-to-point transmission services for which it is subscribed past April 1, 2010 and until a final decision on this complaint has been made.
18. In terms of the final decision, EMI asks the Régie to accept the complaint and to order the transmission provider to allow EMI to use the firm, long-term point-to-point transmission services subscribed in accordance with the OATT.

### Part III – Factual and contractual context

#### *The total transmission capacity (TTC) and the firm service requests on the HQT-NE path*

19. This complaint hinges on the request to transmit from point-to-point on the transmission provider's network and having the interconnection (HVDC Phase II) as a delivery point allowing access to the New England and North-East American markets.

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20. On January 5<sup>th</sup> and 9<sup>th</sup>, 2007, EMI, in its capacity as a transmission service customer, made two requests for long term, firm point to point transmission services for the capacities of 43 MW and 68 MW (including transmission losses) respectively on the MATI-HQT-NE path, such that it appeared on the inscriptions and confirmations attached on the HQ Oasis website produced in association with the support of the present complaint under the heading EMI-1
21. These requests for transmission service were judged complete by the transmission provider, agreements of service for the firm, long-term point-to-point transmission service (hereafter the “2007 Service Agreement”) for the reserved capacities of 43 MW (MATI-HQT 43 MW, HQT-NE 41 MW) and of 68 MW (MATI-HQT 68 MW, HQT-NE 65 MW) were intervened between the parties conforming to the methods of the OATT, the sum of which appears in a copy of the transmission service agreements produced in association with the support of the present complaint under the heading EMI-2
22. The transmission service requests (EMI-1) were accepted by the transmission provider without restriction or condition other than certain mentions concerning planned maintenance of the solicited assets (transmission lines/interconnects) such as it appears in appendix B of the 2007 Service Agreement (EMI-2)
23. The 2007 Service Agreement stipulates in articles 2 and 5
  - a. 2. The transmission provider has established that the transmission service client has presented a complete request for firm point-to-point transmission service according to the HQ OATT
  - b. 5. The transmission provider agrees to provide and the transmission service client agrees to pay for the firm, long-term point-to-point transmission service according to the stipulations of Part II of the HQ OATT and the present service agreement.
24. The firm transmission services in the two aforementioned cases began April 1, 2007, as shown in EMI-2
25. Since the beginning of the transmission provider’s OASIS system, the maximum transfer capacity on the HQT-NE path (HVDC Phase II interconnect) has been 2000MW.
26. Besides that, the affiliate of the transmission provider, Hydro-Quebec Production (HQP) subscribed for the period of January 1, 2000 to December 31, 2002 a reserved capacity of 2000MW of firm service on this path and 1000MW for the following year for a service ending December 31, 2003, as show in the inscriptions attached to the transmission provider’s OASIS under the heading EMI-3

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27. From January 1, 2004 to April 1, 2007, it appeared that the majority of the point-to-point transmission service along the HQT-NE path were non-firm or short term, as shown in the inscriptions attached to the transmission provider's OASIS under the heading EMI-4
28. January 19, 2006, Newfoundland and Labrador Hydro (NLH) submitted a transmission service request indicating, among others, the LAB-HQT-NE path for long-term, firm point-to-point transmission service for a capacity of 95 MW to start in 2015. NLH's request was added to the OASIS February 1, 2006. This request is presently the object of a complaint (P-110-1565), presented to the Régie by NLH.
29. January 20, 2006 HQT, an affiliate of the transmission provider, made a firm, long-term point-to-point request for services starting July 1, 2009 on the HQT-NE path for a capacity of 1200 MW and this request for service was deemed complete by the transmission provider, as shown in the inscriptions attached to the transmission provider's OASIS under the heading EMI-5
30. January 5 and 7, 2007, EMI submitted its previously mentioned service requests (EMI-1), which were the subject of the 2007 Service Agreement (EMI-2) on the path MATI-HQT-NE for reserved capacities totaling 111 MW (MATI-HQT 111 MW, HQT-NE 106 MW)
31. February 5, 2007, NLH carried out a new firm service request to the transmission provider involving additional capacities of 230 MW on the HQT-NE path starting in 2015. It is presently the object of a complaint (P-110-1566), presented to the Régie by NLH.
32. August 2, 2007, EMI deposited by the basis of the transmission provider's OASIS system two firm, long-term point-to-point transmission service requests for 105 MW each (including transmission losses) on the ON-HQT-NE path for service starting June 1, 2009, as shown in the inscriptions and confirmations attached to the transmission provider's OASIS under the heading EMI-6
33. Following a system impact study completed by the transmission provider in May 2008, the transmission provider accepted the request for firm, long-term transmission service on the ON-HQT-NE path for a total reserved capacity of 210 MW (ON-HQT 210 MW, HQT-NE 200 MW), as shown in the Service agreements for firm, long-term point-to-point transmission service (hereafter 2008 Service Agreement), produced in support of the present under the heading EMI-7
34. The service requests noted by the 2008 Service Agreement were accepted without restriction or condition.
35. No new service agreement was attached to the OASIS system for firm, long-term point-to-point transmission service with a delivery point of NE with the exception

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of a request for 55 MW of firm, annual transmission service subscribed by HQP during the period of July 1, 2008 to January 1, 2010, which is now terminated.

36. Following the group of firm, annual service requests received by the transmission provider for the HQT-NE path, the transmission customers and the capacities they reserved are presently (in the order they were received) as follows:

Customer	Capacity requested and start date of service	State of request
NLH	95 MW (2015)	On hold (complaint in process)
HQP	1200 MW (July 2009)	Transmission Service Agreement
EMI	106 MW (April 2007)	Transmission Service Agreement
NLH	230 MW (2015)	On hold (complaint in process)
EMI	200 MW (June 2009)	Transmission Service Agreement
HQP	55 MW (July 1, 2008)	Finished

37. Between April 1, 2007, and July 1, 2009, HQP (55 MW) and EMI (111/106 MW) were the only transmission service clients using the HQT-NE path
38. Since July 1, 2009, only HQP and EMI were users of transmission provider's firm transmission services on the HQT-NE path for the capacities that they each reserved.
39. In terms of each of the requests for firm transmission service received and accepted by the transmission provider on the HQT-NE path, the transmission provider considered, after having completed the appropriate system impact studies in accordance with OATT (Appendix C and Appendix D), that its network was capable of offering the service requested and that is what it communicated to the transmission service customers in question;

*The notice of renewal of firm, long-term point-to-point transmission service subscribed by EMI*

40. EMI received and paid for the firm transmission service subscribed in the 2007 Service Agreement for the period from April 1, 2007 and March 31, 2008
41. As per article 2.2 in the OATT, EMI exerted its right to renew the firm transmission service for the capacities reserved in the terms of the 2007 Service Agreement and the transmission provider received and accepted the demand as shown on the transmission provider's OASIS produced to lend support to the present complaint under the heading EMI-8

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42. Except for the comments of the transmission provider concerning the useful life of the interconnection in question, no restrictions, conditions or modification of rights associated with the requested transmission service were imposed or raised by the transmission provider, as shown in the March 4, 2008, letter from the transmission provider, produced to lend support to the present complaint under the heading EMI-9
43. EMI received and paid for the firm transmission services subscribed for the period from April 1, 2008 to March 31, 2009 on the MATI-HQT-NE path
44. As per article 2.2 of the OATT, EMI exercised the renewal of firm transmission services subscribed for the reserved capacities in the 2007 Service Agreement and the transmission provider received and accepted the request with no restrictions or conditions, except the comments of the transmission provider concerning the useful life of the interconnection in question as shown in the March 4, 2009 letter from the transmission provider, produced to lend support to the present complaint under the heading EMI-10
45. EMI received and paid for the firm transmission service subscribed for the reserved capacity on the MATI-HQT-NE path for the period of April 1, 2009 to March 31, 2010
46. EMI also received and paid for the firm transmission service subscribed for the reserved capacity of 210 MW (including transmission losses) subscribed in the 2008 Service Agreement along the ON-HQT-NE path since the beginning of commercial service of the ON-HQT interconnection.
47. January 19, 2010, EMI, as per article 2.2 of the OATT, submitted a request for renewal of firm, long-term, point-to-point transmission service for the reserved capacity according to the 2007 Service Agreement on the MATI-HQT-NE path, as shown in the OASIS system and in the confirmation letter from Mr. Vincent Francoeur dated January 20, 2010 produced to lend support to the present complaint under the heading EMI-11

*The refusal of the transmission provider to follow through on the renewal confirmation per article 2.2 of the OATT*

48. By letters dated February 12, 2010, the transmission provider advised EMI that it had refused its request for renewal of firm, long-term, point-to-point transmission service along the MATI-HQT-ON path because the transmission provider couldn't offer the requested capacity as of April 1, 2010, as shown in the letters from the transmission provider produced to lend support to the present complaint under the heading EMI-12

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49. Tuesday, February 16, verbal communications between a representative of the transmission provider (Mr. Glenn Sylvain) and Mr. Vincent Francoeur and Mr. Pascal Cormier from EMO in order to get more detail as to the underlying motives for the refusal of the transmission provider.
50. February 17, 2010, the transmission provider's OASIS site showed that the two renewal requests from EMI on the MATI-HQT-NE path were refused because the available transmission capacity (ATC) on the path was insufficient.
51. Afterward, EMI submitted a request for written detail Thursday, February 18, 2010, as shown in a copy of the email submitted to lend support to the present complaint under the heading EMI-13
52. February 22, 2010, EMI submitted its renewal request for the existing service on the ON-HQT-NE path for the reserved capacities (2010.200 MW), as shown in the inscriptions on the OASIS site, produced to lend support to the present complaint under the heading EMI-14
53. In an email dated Monday, February 22, 2010, Mr. Glenn Sylvain provided additional information in response to the request for written detail from EMI as shown in the document produced to lend support to the present, which speaks for itself, and which is under the heading EMI-15
54. February 23, 2010, Mr. Sylvain informed the representative of EMI that the renewal of firm transmission service on the ON-HQT-NE (2010/200 MW) was under study
55. February 23, 2010, the inscription referring to the renewal of firm transmission services on the MATI-HQT-NE (111/106 MW) was, without intervention from EMI, reclassified by the transmission provider to read "under study"
56. Thursday, February 25, 2010, EMI prevailed of the accelerated process for examination of complains and submitted a formal complaint to the transmission provider resulting in his refusal to confirm the renewal of the service agreement concerning the firm annual transmission service on the MATI-HQT-NE path, as shown in a copy of this complaint produced to lend support to the present complaint under the heading EMI-16
57. March 1, 2010, the transmission provider suggested to EMI representatives a meeting for Thursday, March 4, 2010, to discuss possible solutions. The transmission provider also requested a delay (extension) of 5 working days until Thursday, March 11, 2010, at which time it would formally reply to EMI's complaint in the event that the parties could not come to an acceptable solution.
58. EMI, in good faith, accepted to participate in the meeting and accepted the delay of the response to the complaint

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59. The meeting happened March 4, 2001 and nothing was resolved since the transmission provider's only suggestion was to make reservations for non-firm transmission service
60. March 11, 2010, the transmission provider submitted its written response to EMI's complaint and maintained its position, as shown in the copy of the letter provided in support of the present complaint under the heading EMI-17
61. Considering the motives put forward by the transmission provider to maintain its refusal of to renew EMI's 2007 Service Agreement on the MATI-HQT-NE path, there is reason to anticipate that the renewal of the 2008 Service Agreement (EMI-7 and EMI-14) on the ON-HQT-NE path will also be refused by the transmission provider.

### *The capacity of the transmission provider's network to provide the requested service*

62. To date, EMI receives and continues to pay for the firm point-to-point transmission services on the MATI-HQT-NE and ON-HQT-NE paths and no additional reserved capacity on these paths have been studied or accepted by the transmission provider (NLH requested service starting in 2015 and the outcome of this request is contingent on the outcome of NLH's complaints and if NLH accepts to sign the appropriate service agreements).
63. To date, none of the electricity transmission equipment and infrastructure on the MATI-HQT-NE and ON-HQT-NE paths have undergone any modification or derating, and there has been no other event on the network that would be expected to bring, to impose, or to necessitate a reduction in the available transfer capacity on the paths on the network of the transmission provider and the transmission provider has not raised any support for its refusal to renew service.
64. To its knowledge, the provider of firm, point-to-point transmission service has experienced no reliability problems in particular on the transmission provider's network.
65. The useful life of the equipments and infrastructure of the interface between the Quebec network and the New England network are in no way a factor in the decision of the transmission provider to refuse the renewal of transmission services. In addition, the firm transmission capacity sold by HQT at a level of more than 1200 MW on the HQT-NE interconnection is not currently causing any problems whatsoever.

### *The transmission provider's reasons/support for its refusal to renew and the reduction of the maximum total transmission capacity on the HQT-NE path*

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66. December 23, 2008, the transmission provider noted on its OASIS site the following

“Coordination of transmission capacities

In the context of FERC’s 890, the transmission provider will undertake in 2009 work to align the transmission capacities on the OASIS site with those on the neighboring networks. To the extent of the progression of the work, the new transmission values will be put in place.

As of the publication of the present notice, the transmission provider will analyze all new transmission service requests on the interconnections based on the limits used by the neighboring networks.”

This notice was on the OASIS site for about a month, the entire notice is shown in a copy of this inscription produced in support of the present (complaint?) under the heading EMI-18 and EMI-17

67. At the time of renewal in 2009 of EMI’s firm transmission service (2007 Service Agreement/MATI-HQT-NE), no reservation or restriction having to do with the notice mentioned in the following paragraph was raised by the transmission provider, as shown in the March 4, 2009 letter from the transmission provider (EMI-10)

68. July 8, 2009, the transmission provider noted on its OASIS site the following:

“Harmonization of transmission capacities

This notice is made following the notice published by the transmission provider on the OASIS site October 23, 2008.

As of today, the transmission provider is harmonizing its firm transmission capacities available with those of the neighboring networks so that the transmission reservations of its clients will be feasible at all times in function with the transmission capacities of the neighboring networks. The transmission capacities for each path for the next thirteen months are attached on the OASIS site of the transmission provider.

No existing firm transmission reservations, as of the time of the publication of this notice, are affected by this harmonization. All new requests for firm transmission service, including renewal requests, will be evaluated in accordance with the new firm capacity values noted by the transmission provider”

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This notice was on the OASIS site for about a month, the entire notice is shown in a copy of this inscription produced in support of the present (complaint?) under the heading EMI-19 and EMI-17

69. February 12, 2010, the transmission provider write EMI and informed them of what follows with regard to the path (MATI-HQT-NE)(EMI-12)
- “An analysis of the firm transmission capacities on the specified path indicates that HQ, in its activities as a transmission provider, cannot offer the requested capacity and by consequence is not able to renew your request”
70. It wasn't until the February 16, 2010 conversation between Mr. Francoeur and Mr. Sylvain that the EMI representative understood that the refusal for renewal was linked to the harmonization of firm transmission capacities on the neighboring networks put in place by the transmission provider.
71. It was Mr. Sylvain's responses to the explanations requested by EMI on February 22, 2010 (EMI-15) that led EMI to understand
- i. That the transmission provider chose to harmonize with neighboring networks because the capacities listed by the neighboring networks were inferior to those listed by HQT
  - ii. That the transmission provider had, in addition, decided that in implementing this unilateral harmonization, it treated renewal requests (article 2.2 of the OATT) on the same level as new transmission requests, and
  - iii. That the methodology of allocation of transmission service rights under the harmonized values would be evaluated based on the order in which the transmission service requests were received before the harmonization
72. At no time before, during, or after the process of harmonization was announced did the transmission provider consult its transmission service customers concerning the harmonization and the impacts that the changes would have on their rights (by the transmission provider) on both sides of the interconnection
73. At no time did the transmission provider request authorization or previous approval of the Régie before proceeding with the harmonization and has also, directly or indirectly, unilaterally modified or amended its methods and its OATT
74. It should be recalled that the transmission provider, at the same time, felt it necessary to request the approval of the Régie in the framework of the tariff file R-3669-2008, Phase II, concerning (amongst others) appendix C of the OATT
75. Although FERC can require that certain public utilities and electricity transmission providers review their methods of determining the total transmission capacity available (TTC and ATC), it has no regulatory title in any jurisdiction on

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the Quebec operations of the transmission provider – this relies exclusively in the competence of the Régie

76. Beside, the actions taken on by American transmission providers associated with the harmonization resulting from FERC order 890 are subject to the approval of American regulatory authorities
77. EMI is of the opinion that it should be the same for all changes that the transmission provider wishes to instate in Quebec and which could affect the rights of transmission providers

Part IV – History of transmission capacity and the access to transmission service on the portion situation in New England

78. A market participant who wished to sell energy in the New England market and whose resources are situated outside of this market is liable to hold pre-existing transmission service rights to and in the market
79. To this extent, the ISO-NE responsible for electricity transmission, offers a transmission service to an across its network based on similar models to the HQ OATT
80. Without the approach of all these characteristics, it's fair to say that access to the New England through the Quebec is limited to the HVDC Phase II interconnection between Quebec and Massachusetts.
81. The technical transmission capacity of Phase II is 2000 MW (between the two points mentioned in previous paragraphs “Designed capacity”)
82. Consequentially, obtaining firm transmission service rights on the American side of Phase II was always essential for all participants (whose resources were in Quebec or flowed through Quebec) wanting to do business in North-East American markets.
83. EMI was confident that it would obtain firm transmission rights (subject to renewal) on the Quebec side (which was previously established) since, in previous years, it has obtained and subscribed for firm transmission service rights of the same type of the American side of Phase II for total reserved capacities of 282 MW up to 2013 (subject to renewal with the exception of a 30 MW block), as shown in the Service Agreements produced to lend support under the heading EMI-20
84. EMI continues to use the firm transmission service to meet its obligations in the New England and North-East American markets
85. HQP also holds firm transmission rights on the American side of Phase II

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86. HQP and EMI are the only participants in the market who have resources situated in Quebec, holding long-term, firm transmission service rights on both sides of Phase II
87. Presently, the holders of firm transmission rights on the American side cannot program more than 1200 MW of firm transmission on Phase II for delivery to Sandy Pond, Massachusetts
88. EMI chose to acquire firm transmission service to be assured of the highest priority of access to the North East American markets and in passing through Phase II
89. Since the reductions of transit are necessary because of constraints on the American network, the priority of reservations for transmission services on the American side of Phase II determine the order of cuts for the participants who want to transmit regardless of price (price takers); therein lies the importance of holding firm transmission rights on the American side.
90. At the same time, since the reductions in transmission are necessary because of constraints on the HQ network, the priority of reservations for transmission services on the HQT network determines the order of cuts for participants who transmit to the US; therein lies the importance of holding firm transmission rights on the Quebec side
91. All of the participants in the market know the applicable rules and the transmission clients, whether on the Quebec side or the ISO-NE side, have subscribed for electricity transmission services in full awareness of the rules
92. There is no mechanism connected to the attribution of the transmission rights on the two sides of Phase II, which means that having firm transmission rights on one side doesn't in any way guarantee the same rights will be granted on the neighboring network. Since HQTs reason for implementing the harmonization (EMI-19) this harmonization cannot be achieved in the absence of a joint mechanism connecting the attribution of transmission rights between HQ and its neighboring networks.

### Part V – The effective impact of the harmonization

93. By harmonizing, the transmission provider puts a term, unilaterally, in its contractual obligations towards others EMI and refuses to respect its long-term obligations in the terms of the OATT and significantly modifies its methods, without prior approval from the Régie
94. By harmonizing, the transmission provider unduly gives advantage to its affiliate, HQP to the detriment of EMI and its other firm transmission service customers by

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- effectively giving HQP control and full access to Phase II (1200 MW) for all firm transmission energy on the Quebec network
95. The pretention of the transmission provider to the effect that the implementation of an approach based on the harmonization of the interconnections in function of the receiving capacities of the neighboring networks is a pure question of controlling the network. It is irreconcilable with the position that it took with regard to the changes requested in the framework of file R-3669-2009 Phase II and in particular to Appendix C-1
96. EMI considers that such changes cannot be brought by the transmission provider without a well-founded examination by the Régie of the pertinence of the change, the impact on the rights of existing transmission clients and, if need be, the establishment
97. By refusing to recognize the complaint reached from the engagements under the terms of article 2.2 of the OATT and unilaterally implementing a new methodology of determining TTC and ATC, the transmission provider caused EMI certain and irreparable damage by depriving it of the competitive advantage which it legally acquired and putting in peril its capacity to respect the contractual obligations that it assumed based on faith in the rights consented by the transmission provider
98. By refusing to renew the long-term, firm point-to-point transmission services subscribed, the transmission provider deprived its transmission service client of the rights and privileges associated with this type of priority transmission service.
99. By reducing the firm transmission capacity, the transmission provider also deprives itself of additional revenue which would have an impact on the increase in the cost of transmission service assumed by the local load.

### Part VI – Resulting harm of the refusal of renewal

100. EMI, having many transmission engagements to provide annual transmission services on both sides of Phase II, subsequently collected long term understandings regarding the sale of energy, power and rights associated with renewable energy credits (RECs) in the North-East American markets
101. EMI developed a strategic approach based on a portfolio of resources designated for the purpose of meeting its commercial obligations towards supplying its American customers
102. The result of this strategy not only requires the use of the resources at the disposal of EMI in Ontario and certainly in Quebec but in addition, EMI buys energy to resell it in order to respect its commitments or to participate in the Day Ahead or Real Time markets of NEPOOL, amongst others

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103. An essential element of this commercial strategy is priority access to the New England and North-East American markets by the reserved paths (MATI-HQT-NE and ON-HQT-NE) on the transmission provider's network
104. Aside from direct financial losses, EMI will be in breach of contract and subject to important penalties if it cannot meet its obligations towards its supply customers
105. EMI is equally engaged to provide to certain American power customers, either concurrently with an energy supply contract or as a distinct energy product contract to be able to provide delivery at all times at the request of the client
106. EMI will be the object of severe penalties and in breach of contract if it cannot respect its engagements and it has accepted to conclude that such understandings are in function with the annual firm transmission service rights, which guarantee access to the American markets by the reserved paths
107. EMI, in the interest of optimizing its resources, also sold renewable energy credits which were provided in part by its operations situated in Quebec and accessing the American market via the HQT-NE path
108. Since 2007 the production associated with the resources at "La Lièvre", situated in Quebec, have, in essence, been transported towards the North-East American markets using the HQT-NE path and Phase II/ISO-NE
109. In addition, EMI carried out hedge funds to protect the value of a large portion of its deliveries to New England. In this respect, possible interruption, as a result of failure of firm transmission service, doubled delivery to cover operations puts EMI at risk of significant financial losses on the hedges without the benefit of the revenue flow from the delivery of power
110. As for the New England market for the Day Ahead or Real time products, the loss of firm transmission rights deprives EMI of a significant competitive advantage
111. Aside from financial losses, penalties and other direct costs, the damage to the reputation and the confidence of its clients for the capacity of EMI and its affiliates to respect their obligations will be irreparable

### Part VII – The right

#### *The legal aspects of the OATT*

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112. The transmission provider has always recognized that the right of renewal of long-term, firm point-to-point transmission service resulted from article 2.2 of its OATT (see the letter from March 4, 2008 (EMI-9), March 4, 2009 (EMI-10) and February 12, 2010 (EMI-12) which have already been produced)
113. This right to renewal of transmission service commonly called “rollover right” is part of the methods of the transmission provider’s OATT sine the first version of the OATT by the Régie (decisions D-2002-286 and D-2003-12)
114. In a continuing manner, article 2.2 was resumed in all subsequent versions of the OATT approved by the Régie and has had no significant amendments. It is in the OATT presently in force by virtue of the decisions of D-2009-018 and D-2009-023.
115. Article 2.2 of the OATT assures the transmission client has the “right to continue to use the transmission provider’s transmission service to the expiration, to the renewal (rollover), or to the renewal of the contract” by giving the transmission provider notice for at most 60 days before the end of the contract.
116. The right to renew firm transmission service under the terms of article 2.2 of the OATT is examined at the initial request
117. Once the initial request for service is granted (without condition or restriction), the transmission service client has the right to exercise the renewal option regardless of the restraints on the transmission provider’s network that arise after it was granted. The renewal was a right acquired subject to the conditions of reduction of service outlined in article 13.6 of the OATT (the obligation to accept a duration at least equal to that of all new current requests, which is not the case here)
118. In virtue of article 13.2 of the OATT, the following is stipulated:
- “... All long-term, firm point-to-point transmission service has a priority for access which is superior to short-term, firm point-to-point transmission service and equal to those resources designated by the distributor to supply the local load and to those resources designated by the client of the integrated network to supply its load...”
119. Article 15.1 of the OATT stipulates the following:
- “15.1 General Conditions: The transmission provider will provide a firm and non-firm point-to-point transmission service on, by and across its network to all transmission service clients who have met the requirements of article 16”
120. Article 15.2 of the OATT stipulates the following:

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“15.2 Determination of available transmission capacity: a description of the specific methodology followed by the transmission provider to evaluate the ATC posted on the transmission provider’s OASIS (article 4) is found in Appendix C. In the event that it does not have sufficient transmission capacity to respond to the request for transmission service, the transmission provider will conduct a System Impact Study on the network.”

121. Article 16.1 of the OATT reads as follows:

“16.1 Conditions for transmission service clients to respect: the transmission provider will provide the point-to-point transmission service only if the following conditions are met by the transmission service client

- a. The transmission service client has submitted a complete service request
- b. The transmission service client has met the criteria for creditworthiness outlined in article 11
- c. The transmission service client has measures put in place for all other transmission service necessary to deliver aside from the equipment and resources of the transmission provider before the beginning of service in accordance with Part II of the OATT
- d. The transmission service client agrees to pay for all additions to the network that are traced specifically to the client in accordance with Appendix J of the OATT, whether or not the transmission service clients uses the service during the entire period of its reservation
- e. The transmission client has signed a point-to-point service agreement”

122. Article 134 of the OATT stipulate the following:

“13.4 Service Agreements: The transmission provider must offer a normal agreement relative to the firm point-to-point transmission service (Appendix A) to an admissible client given that they have submitted a complete request for firm point-to-point transmission service. The transmission provider will provide to the Régie the service agreements containing the information required by the OATT in the 30 days after it has been signed”

123. After the request for firm, long-term, point-to-point transmission service was submitted by EMI, the transmission provider determined that it was a complete request and that its network was able to provide the requested service for the reserved capacity (see article 1.4 of the OATT) and, consequently, offered firm, long-term point-to-point transmission service agreements to EMI

124. After having established the ATC, the transmission provider followed the process of Appendix C and, if necessary, that of Appendix D of the OATT and

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each time it determined that its network was able to offer the service requested by EMI without condition or restriction

125. No event or condition occurred with respect to the network that would cause the reliability of the transmission provider's network to be questioned since the aforementioned service requests. Appendices C and D were not modified or amended in any way pertinent to this complaint – nothing justifies the transmission provider not offering the services specified according to the OATT
126. Keeping in mind article 16.2 of the OATT, the transmission service client has the responsibility to subscribe the required understandings of transmission services with third parties:
- “16.2 Responsibility of the transmission service client for understandings with a third party: The arrangements that could be imposed by other electricity networks are the responsibility of the transmission service client who is requesting the service”
127. Consequently, no version of the transmission provider's OATT currently in place supports or justified the decision of the transmission provider's refusal to renew the transmission service subscribed by EMI
128. No applicable version of the OATT authorizes the transmission provider to refuse the renewal of a long-term service agreement
129. It is contrary to the OATT to separate the priority of reservation and the right to continue service for the sole reason that the transmission provider wants to harmonize its available transmission capacities with those of neighboring networks without prior approval by the Régie
130. The absence of a change, event, or condition on the transmission provider's network that could possibly affect the reliability of the Quebec network, nothing justifies the necessity for the transmission provider to immediately implement these measures
131. The transmission provider cannot justify saying that it is “managing its network” while respecting FERC orders 890A and 729, since by doing this it irreparably affecting the rights of its clients according to the OATT and existing service agreements
132. In virtue of article 32 of the law, the Régie has exclusive right for change or modify the OATT
133. Presently, the two adjacent networks operate their respective networks independently from one another, attributing and granting the associated

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transmission service rights according to their own rules and carry out the renewals according to their respective OATTS

134. There is no technical or operational reason to justify the imposition of the loss of EMI's firm transmission rights as a result of changing the ATC to "harmonize" and even if there was a reason, the Régie would need to be the one who changes the methodology of allocation of transmission rights in order to ensure the appropriate non-discriminatory measures are taken
135. The absence of prior consultation with the transmission service clients constitutes a violation of obligation by the transmission provider to consult its clients and goes against the principle of transparency and equality underlying the reforms that guide the transmission provider
136. It is important to note that the firm transmission service attributed to the HQT-NE path exceeded 1500MW since June 1, 2009 and that no network event or condition has happened to change the network
137. In addition, to this day, the transmission provider continues to offer firm service for a higher reserved capacity than the "harmonized" transmission capacity
138. Given the circumstances and what has been presented, it appears that since July 2009 and until today there has been no urgency to harmonize the values between the two networks and short-circuit the processes in the R-3669-2008 file (Phase 2)

### Part VII – Order to safeguard

139. The Régie has the power by article 34 of the law to take "any measure that is deemed appropriate to safeguard the rights of the people concerned"
140. EMI asks the Régie to allow them to continue to use the firm transmission services in the 2007 Service Agreement (EMI-2) on the MATI-HQT-NE path from April 1, 2010, until a final decision has been made on this complaint
141. This request constitutes a temporary solution that does not prejudice the final decision to be made on this complaint
142. EMI has a clear right to renewal of firm transmission services per the 2007 Service Agreement according to article 2.2 of the OATT:  
"2.2 Priority of reservation for existing firm transmission clients: The existing firm transmission clients with a contract of a year or more have the right to continue to use the transmission service of the transmission provider to the expiration, to the renewal (rollover), or to the renewal of their contract. This

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priority of reservation of transmission does not depend on the fact that the existing client continues to purchase the producer's electricity, or choose to purchase electricity from another provider. If, at the end of the duration of the contract, the transmission provider's network cannot accommodate all transmission service requests, the existing firm transmission client must accept a contract duration which is at least equal to those of the current new request of admissible clients who are able to pay the fair and reasonable fee which is approved by the Régie for this service. This priority of reservation for existing firm service clients is a continuing right and can be exercised at the end of all firm contracts with duration of a year or longer, on the condition that the client provides the transmission provider with written notice and notice via OASIS no less than 60 days before the end of the contract."

143. More specifically, the priority of reservation is a right which continues unless the client fails to provide adequate notice of renewal
144. Without requested order, EMI will suffer a serious and irreparable harm as explained in part VI entitled "Resulting harm of the refusal of renewal"
145. Given the explicit terms of article 2.2 of the OATT and the Service Agreements relating to this complaint, and the irreparable damage described above, the inconveniences clearly lean in favor of EMI
146. In effect, the transmission provider will suffer no harm by maintaining the current service agreements. In fact, the firm transmission services will actually provide them with additional revenues.
147. The proposition of the transmission provider to grant non-firm transmission services is not acceptable because EMI loses its rights (right and privileges to services which it has paid in good and due form since April 1, 2007, as described above) and does not consider the difficulty that EMI will have with respect to its diverse engagements with third parties to which it has already committed
148. The harm that EMI will experience if the Régie does not conform with the status quo is real and non-hypothetical
149. The order requested equally serves to give a temporary solution against the harmful effects of the length of the complaint procedures
150. It is urgent that the Régie agrees to order the safeguard given the position adopted by the transmission provider and the imminence of the expiration of the 2007 Service Agreement on April 1, 2010

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151. At this stage in the complaint procedure, the Régie does not need to accept any proof other than that presented “to its face” and that it can reevaluate the whole of the proof in the framework of its final decision

152. Also, EMI submits respectfully to meet the conditions required to obtain the temporary measures mentioned above.

### Part IX – Amendments

153. EMI reserves the right to amend this complaint, including the request for order to safeguard, in the event that the transmission provider, for the same reasons, opposes to the complainant EMI a refusal to renew the annual firm transmission services under the 2008 Service Agreement on the ON-HQT-NE path (see EMI-7 and EMI-14)

154. EMI also reserves the right to produce additional proof, including expert witnesses, in support of the present complaint if required by the Régie

### **For these reasons, the following is requested of the Régie:**

**To accept** the request for hearing from EMI for measures to safeguard their rights and have a decision before March 31, 2010 and shorten, if required, all foreseeable delays to hearing

**To set** a hearing date for this complaint

**To accept** the request for measures to safeguard the rights of the complainant

**To order** the transmission provider, HQT, from April 1, 2010 and until a final decision is made, to allow EMI to continue to use the long-term, point-to-point firm transmission services on the MATI-HQT-NE path in accordance with the 2007 Service Agreement (EMI-2) and under the same terms and conditions that the OATT resulting from the decisions D-2009-018 and D-1009-023 given by the Régie for a reserved capacity of 111/106 ME

**To fix** the date of the complaint hearing at the earliest possible date that the Régie deems appropriate

**To accept** the present complaint by complainant EMI

**To order** the transmission provider, HQT, to renew for the period of April 1, 2010 to March 31, 2011 the 2007 Service Agreement (EMI-2) according to the OATT and **to order** the transmission provider to permit EMI to continue to use the firm, long-term point-to-point transmission service on the transmission provider’s network and in particular on the MATI-HQT-NE path, according to the OATT for a reserved capacity of 111/106 MW