

Complaint against HQT and request for order to safeguard the rights of the plaintiff, Brookfield Energy Marketing Inc (BMI), following the refusal to renew the firm, long-term transmission service on the ON-HQT-NE path.

(Arts. 94 and ss and 34 of the *Loi sur la Régie de l'énergie*, L.R.Q. c. R-6.01)

In support of its complaint and its request for order to safeguard, the plaintiff BMI respectfully submits the following:

Part I – Introduction

1. BMI is a client of electricity transmission service provided by HQT
2. BMI is a participant in the wholesale electricity markets in Quebec, New Brunswick, Ontario and in various other American states, including the North-East
3. To this extent, BMI sells and purchases products associated with electricity such as energy, power, and renewable energy credits in the aforementioned markets.
4. BMI is the second most important client of HQT in terms of point-to-point transmission service in Part II of HQT's OATT
5. BMI has subscribed to HQT, using the appropriate transmission service agreements, reserved capacities totaling 306 MW for firm, long-term, point-to-point transmission service on the MATI-HQT-NE and ON-HQT-NE paths
6. The present complaint and the complaint previously submitted by BMI (P-130-001) concern the exercise of BMI's rights in regards to the firm transmission service agreements, such as will be shown hereafter
7. BMI, on May 13, 2010, gave HQT notice of the complaint which is the object of this present request in conjunction with the procedures of examination of complaints approved by the Régie de l'énergie (Régie) and on May 21, 2010 received a **plea in bar (!?)** from HQT as demonstrated hereafter
8. The issue raised by the present complaint is essentially the same as the that which flowed from the refusal for renewal of firm, long-term, point-to-point transmission service on the MATI-HQT-NE path already transmitted to HQT by BMI on February 25, 2010 and which is the subject of a complaint submitted to the Régie (file P-130-001_ on March 15, 2010

Part II – The issue and the conclusions requested by BMI

9. In 2008, BMI subscribed to agreements for transmission service in accordance with the OATT then in effect for firm, long-term, point-to-point transmission service
10. In accordance with the OATT as approved by the Régie, HQT engaged with the client for transmission service of the type previously mentioned to allow the continuation of this transmission service to the expiration of the initial term or the rollover or renewal of this service with the appropriate notice (article 2.2 of the OATT)
11. BMI gave notice of continuation of service for the annual period starting September 2, 2010 in the prescribed manner, as shown in the request dated February 22, 2010, submitted under the title **BMI-1**
12. March 23, 2010, HQT subsequently informed BMI that it considered their request for renewal of the previously mentioned service premature and it indicated nevertheless that BMI could conclude, from that time, that its request for renewal would eventually be treated in the same manner as the previous requests for renewal by BMI on the MATI-

HQT-NE path, as shown in the letter dated March 23, 2010 from HQ and submitted under the title **BMI-2**

13. March 30, 2010, BMI highlighted by letter it's dissatisfaction with the position adopted by HQT, as shown in the letter dated March 30, 2010 to HQ from BMI, submitted under the title **BMI-3**
14. By letter dated April 14, 2010, HQT advised BMI that it maintained its position previously expressed on March 23, 2010, as shown in the letter dated April 14, 2010, from HQ to BMI, submitted under the title **BMI-4**
15. BMI considers that nothing justifies HQT's position and that this equates to a refusal to confirm the renewal of transmission service required under the terms of the transmission service agreements on the ON-HQT-NE path
16. BMI specifies that no reason other than those mentioned in paragraph 12 were brought forward by HQT in support of its position to not confirm the renewal of the transmission service agreements on the ON-HQT-NE path.
17. In fact, it's necessary to note that HQT's reason for refusing the requests for renewal is that it claims to not be capable of providing the capacity requested by BMI as of September 2, 2010
18. Given the proceeding, BMI feels that HQT's position, as reflected in its letters dated March 23, 2010, and April 14, 2010, represent a refusal to comply with the transmission service agreements on the ON-HQT-NE path in violation of the OATT and for the same reasons which were invoked with regard to same transmission service and which will be treated next in the framework of complaint P-130-001 before the Régie (reduction in the available transmission capacity and right of renewal of service)
19. Consequently, BMI wishes to inform the Régie of a complaint against HQT under articles 94 and ss of the *Loi sur la Régie de l'énergie* (L.R.Q., c. R-6.01), (hereafter "the Law") following the refusal of HQT to renew, as required, the firm, long-term, point-to-point transmission service subscribed by BMI on the ON-HQT-NE path.
20. BMI also wishes to inform the Régie of a request for order to safeguard the rights of the plaintiff with respect to the subscribed transmission services which, according to HQT, will terminate September 2, 2010.
21. BMI feels that the deposit of notice of renewal by BMI of the transmission service agreements on the ON-HQT-NE path is not premature, and that HQT, by its refusal to renew the subscribed transmission services, acts irregularly, without right and in breach of its contractual obligations towards BMI in terms of the OATT which is presently in place.
22. BMI, on the faith of its engagement with HQT as for the nature and range of rights associated with the transmission service in case, has assumed supply obligations with third parties and without immediate intervention by the Régie, it will suffer certain and irreparable harm.
23. BMI requests, in the framework of the present complaint procedure, to be heard as soon as possible and in an urgent manner in terms of the order to safeguard in a manner such that a decision can be made before July 15, 2010
24. In effect, by the present complaint, BMI requests that the Régie order on a provisional and intermediate basis that HQT allow BMI to continue to use the firm, point-to-point transmission services subscribed from September 2, 2010 and until a final decision has been delivered on the present complaint

25. With regard to the final decision being sought, BMI requests that the Régie welcome the complaint and order HQT to allow BMI to continue to use the firm, long-term transmission services subscribed in conformity with the specifications of the current OATT
26. BMI feels that it is in the interests of all parties that the Régie treat the present complaint as well as complaint P-130-001 at the same time, in order to reduce the statutory burden associated with the study of these disagreements.

Part III – Factual and Contractual Context

The total transmission capacity (TTC) and the request for firm service on the HQT-NE path

27. The present complaint concerns the request for point-to-point transmission service on the HQT network and having as a point of delivery the interconnection (HVDC Phase II) allowing access to the New England and North-East American markets
28. August 2, 2007, BMI, as a transmission service customer of HQT, submitted two requests for firm, long-term, point-to-point transmission service for capacities of 105 MW each (including transmission losses) on the ON-HQT-NE path with service from June 1, 2009, as shown in the inscriptions and confirmations posted on HQT's OASIS site produced in support of the present complaint under the heading **BMI-5**
29. Following a system impact study completed by HQT in May 2008, these requests for transmission service were deemed complete by HQT, and service agreements for firm, long-term, point-to-point transmission service (hereafter the "ON-HQT-NE service agreements") for reserved capacities of 105 MW each (ON-HQT 105 MW, HQT-NE 100 MW) were entered into between the parties in conformity with the methods of the OATT then in place. A copy of the transmission service agreements are produced in support of the present article and submitted under the heading **BMI-6**
30. The subscribed transmission service was for the duration of one year, with the start of service June 1, 2009, or the effective date of the start of commercial service of the On-HQT line (new interconnection)
31. Consequently, as shown on the inscriptions presently shown on the HQT OASIS site, the final in-service date was September 2, 2010 (see BMI-5)
32. The requests for transmission service (BMI-5) were accepted by HQT without restriction or condition, as shown in the ON-HQT-NE service agreement (BMI-6)
33. The ON-HQT-NE service agreement stipulates in articles 2 and 5:
"2. HQT has established that the transmission service client has presented a complete request for firm, point-to-point transmission service in accordance with the HQ OATT
5. HQT agrees to provide and the transmission service client agrees to pay for firm, long-term, point-to-point transmission service in conformity with the stipulations of Part II of the HQ OATT and the present service agreement"
34. The firm transmission service in the two previously mentioned cases started on the commercial in-service date of the ON-HQT interconnection
35. Since the implementation of HQT's OASIS system, the maximum capacity associated with the HQT-NE path (interconnection HVDC Phase II) has been 2000 MW

36. In addition, an affiliate of HQT, HQP, subscribed for the period of January 1, 2000 to December 31, 2002 a reserved capacity of 2000 MW of firm service on this path and for the following year 1000 MW for a service terminating December 31, 2002, such as it appears in the attached duplication of the inscriptions posted to HQT's OASIS under the title of **BMI-7**
37. From January 1, 2004, to April 1, 2007, it appeared that the majority of point-to-point transmission service using the HQT-NE path was of a non-firm nature or firm short-term, as shown in the attached duplication of the inscriptions posted to HQT's OASIS under the title of **BMI-8**
38. January 19, 2006, NLH submitted a request for transmission service involving, among others, the LAB-HQT-NE path for firm, long-term, point-to-point transmission service for a capacity of 95 MW to start in 2015. NLH's request was attached on HQT's OASIS February 1, 2006. It is the request which is currently the subject of complaint P-110-1565, brought before the Régie by NLH
39. January 20, 2006, the affiliate of HQT, HQP, submitted a request for firm, long-term, point-to-point transmission service starting July 1, 2009 on the HQT-NE path for a capacity of 1200 MW and this request for service from HQP was considered complete by HQT, as shown in the inscription posted to HQT's OASIS website and produced under the title **BMI-9**
40. On the 5th and 9th of January, 2007, BMI, as a transmission customer of HQT, submitted two requests for firm, long-term point-to-point transmission service for capacities of 43 MW and 68 MW (including transmission losses) respectively on the MATI-HQT-NE path for an annual duration of April 1, 2007 to March 31, 2008, as shown in the inscriptions and confirmations posted to HQT's OASIS site produced in support of the present complaint under the title **BMI-10**
41. These requests for transmission service were deemed complete by HQT, the service agreements for firm, long-term, point-to-point transmission service (hereafter the "2007 service agreements") for reserved capacities of 43 MW (MATI-HQT 43 MW, HQT-NE 41 MW) and 68 MW (MATI-HQT 68 MW, HQT-NE 65 MW) were entered into between the parties in conformity with the methods of the OATT then in place. A copy of the transmission service agreements are produced in support of the present complaint under the title **BMI-11**
42. These transmission service requests (BMI-10) were accepted by HQT without restriction or condition other than certain mentions concerning the planned maintenance of the infrastructure, as shown in Appendix B of the 2007 service agreements (BMI-11)
43. February 5, 2010, NLH submitted a new request for firm service to HQT implying in particular additional capacities of 230 MW on the HQT-NE path to start in 2015. It is the matter of a request which is presently the subject of a second complaint by NLG against HQT and which was brought before the Régie (P-110-1566)
44. August 2, 2007, BMI submitted requests for firm, long-term, point-to-point transmission service for 105 MW each (BMI-5), previously mentioned, which were the subject of the ON-HQT-NE service agreements for reserved capacities totaling 210 MW (ON-HQT 210 ME, HWT-NE 200 MW)
45. The requests for service noted by the ON-HQT-NE service agreement were accepted without restriction or condition

46. No new service agreement for firm, long-term, point-to-point transmission service was concluded and posited to the OASIS system having NE as a point of delivery with the exception of a firm annual service for a capacity of 55 MW subscribed by HQP during the period from July 1, 2008 to January 1, 2010 and which is now terminated
47. Following the body of requests for firm annual service received by HQT on the HQT-NE path, the transmission clients and the corresponding reserved capacities are presently, in the order of the date deposited, as follows:

Transmission Service Client	Capacity and Start of Service Date	Status
NLH	95 MW (2015)	Suspended (complaint)
HQP	1200 MW (July 2009)	Transmission Service Agreement
BMI	106 MW (April 2007)	Transmission Service Agreement
NLH	230 MW (2015)	Suspended (complaint)
BMI	200 MW (June 2009)	Transmission Service Agreement
HQP	55 MW (July 1, 2008)	Terminated

48. It is worth noting that between April 1, 2007 and July 1, 2008, HQT (55 MW) and BMI (111/106 MW) were the only annual firm transmission clients using the HQT-NE path
49. It is also worth noting that since July 1, 2009, only HQT and BMI have been using HQT's firm transmission service on the HQT-NE path for the capacities which they respectively reserved
50. In consideration of each of the requests for firm transmission service received and accepted by HQT on the HQT-NE path, HQT has considered, after having complete the system impact studies it considered appropriate and in conforming with the conditions highlighted in the OATT (Appendices C and D), that its network was able to offer the requested service and this is what it communicated to the transmission service customers involved

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

51. It is worth nothing that with what concerns the 2007 service agreements (BMI-11), BMI submitted, on January 19, 2010, the requests for renewal for the period of 2010-2011 and that these requests for renewal were refused and are now the subject of complaint P-130-001 before the Régie
52. BMI has also received and paid for the firm transmission service subscribed in accordance with the 2007 service agreements and their renewals since April 1, 2007 to date.
53. BMI receives and pays for the firm transmission service subscribed for the reserved capacity of 210 MW (including transmission losses) subscribed in the terms of the ON-HQT-NE service agreement on the ON-HQT-NE path and has done so since the commercial in-service date of the ON-HQT interconnection

54. February 22, 2010, BMI, in conformity with article 2.2 of HQT's OATT, submitted its request for renewal of firm, long-term, point-to-point transmission services for the reserved capacity under the terms of the ON-HQT-NE service agreement, and for the annual period starting September 2, 2010, as shown in the documents produced under the title BMI-1

The refusal of HQT to allow the renewal required under article 2.2 of the OATT

55. As previously mentioned, February 22, 2010, BMI, conforming with article 2.2 of HQT's OATT, submitted a request for renewal of firm, long-term, point-to-point transmission service for the capacities reserved under the terms of the ON-HQT-NE service agreement on the ON-HQT-NE path, for the annual period starting September 2, 2010 (BMI-1)
56. By email dated February 23, 2010, HQT, by way of M. Glen Sylvain, Délégué Commercial for HQT, advised BMI that the two requests for renewal of transmission service on the ON-HQT-NE path would be treated as soon as possible, as shown in the email from M. Sylvain dated February 23, 2010 and produced in support of the present complaint under the title **BMI-12**
57. As previously mentioned, on March 23, 2010, HQT, through M. Sylvain, advised BMI that it considered the previously mentioned requests for renewal premature and indicated nevertheless that BMI could conclude, as of then, that the requests for renewal would eventually be treated in the same manner as the previous requests for renewal from BMI on the MATI-HQT-NE path (BMI-2)
58. March 30, 2010, BMI highlighted with a letter its disagreement with the position adopted by HQT, as shown in the letter of disagreement dated March 30, 2010, to HQ from BMI (BMI-3)
59. By letter dated April 14, 2010, HQT wrote BMI to advise them that they maintained the position expressed previously on March 23, 2010, as shown in the letter dated April 13, 2010 from HQ to BMI
60. May 13, 2010 BMI submitted to HQT the present complaint conforming to the Procedure of examination of complaints established by the Régie, as shown in the document produced under the title **BMI-13**
61. May 21, 2010, HQT informed BMI that it maintained its position of refusing to recognize the right of renewal of the ON-HQT-NE service agreements, as shown in the document produced under the title **BMI-14**
62. As previously mentioned, BMI feels that nothing justifies the position of HQT and that this equates to a refusal to confirm the renewal of transmission service required under the terms of the ON-HQT-NE transmission service agreements
63. In fact, BMI submits to the Régie that it's clear that HQT opposes the non-availability of the transmission service required by way of its decision to reduce the ATC on the HQT-NE interconnection and for the same reasons and justifications that were expressed by HQT in opposition of the position of BMI in file P-130-001
64. For the reasons mentioned above and considering the reasons put forth by HQT to maintain its refusal for renewal of BMI's 2007 service agreements on the MATI-HQT-NE path, it is clear that the renewal of the ON-HQT-NE service agreements (BMI-11) are equally refused by HQT for the same motives

65. BMI specifies that no reason aside from that of the prematurity of requests for renewal were formally put forth by HQT in support of its position of not confirming the renewal of the transmission service agreements on the ON-HQT-NE path
66. Since HQT is contesting complaint P-130-001 and doesn't intend to modify its position, the question of the prematurity appears non only unjustified but to be simply a false deterrent designed solely to unnecessarily prolong the process

The capacity of HQT's network to provide the required service

67. To this day, BMI received and continues to pay for the firm, point-to-point service on the MATI-HQT_NE and ON-HQT-NE paths and no additional capacity reservations on the path are under study, no have been accepted by HQT (NLH has requested a service starting in 2015 and the providing of which was conditional on the outcome of the NLH complaints and its agreement to sign the appropriate service agreements)
68. To this day, the HQT equipment and infrastructures for electricity transmission on the MATI-HQT-NE and ON-HQT-NE paths have known no modification, derating, or network event capable to bring, impose, or necessitate a reduction of available transfer capacity on the paths of HQT's network and HQT has not indicated such thing to support its refusal to renew the service
69. To its knowledge, providing firm, point-to-point transmission service subscribed by the plaintiff hasn't caused any particular reliability problems on HQT's network
70. The lifespan of the equipment and infrastructure of the interface between the Quebec network and the New England network are in no way a consideration in HQT's decision to refuse the renewal of the subscribed transmission services
71. In addition, the firm transmission capacity sold by HQT at a level higher than 1200 MW on the HQT-NE interconnection is not presently causing any problem at all

HQT's reasons to support its refusal to renew and the reduction of the TTC on the HQT-NE path

72. On December 23, 2008, HQT posted to its OASIS site the following general notice

“Coordination of transmission capacities

In the context of FERC Order 890, HQT will undertake in 2009 work to align the transmission capacities posted to the OASIS with those posted to net OASIS of neighboring networks. As the work progresses, the new transmission values will be posted.

From the time of publication of the present notice, HQT will analyze all new requests for transmission service on these interconnections based on the limits of the neighboring networks”

The above description was attached for a period of about a month. A copy of the inscription is produced in support of the present complaint under the title **BMI-15**

73. Since the renewal of BMI's firm transmission service in 2009 (2007 service agreement/MATI-HQT-NE), no reservation or restriction having to do with the notice mentioned in the previous paragraph were raised by HQT, as indicated in the letter dated March 4, 2009 from HQT produced in support of the present complaint under the title **BMI-16**

74. On July 8, 2009, HQT posted to its OASIS site the following general notice

“Harmonization of transmission capacities

The present notice follows the notice published by HQT on OASIS October 23, 2008

As of today, HQT is harmonizing its firm transmission capacities available with those of its neighboring networks so that the reservations of its transmission clients will be realizable at all times according to the transmission capacities of its neighboring networks. The transmission capacities for each path over the horizon of the next thirteen months are posited on the HQT OASIS site

No existing firm transmission reservation, at the moment of the publication of this notice, is affected by this harmonization. All new requests for firm transmission service including requests for renewal will be evaluated in conjunction with the new firm capacity values posited by HQT”

The above description was posted for a period of a month. A copy of this inscription is produced in support of the present complaint under the title **BMI-17**

75. February 12, 2010, HQT wrote BMI and informed them of what follows with regard to the MATI-HQT-NE path, as shown in the document produced under the title **BMI-18**

“The analysis of the firm transmission capacities on the path indicate that HQT cannot offer the requested capacity and consequently is not able to renew your request”

76. At no time, before, during or after the process of harmonization was announced, did HQT consult its transmission clients concerning this harmonization and the impacts that such a change would have on their rights on both sides of HQT's interconnection

77. At no time did HQT request authorization or prior approval from the Régie before proceeding with this harmonization and has also, directly or indirectly, unilaterally modified or amended the OATT

78. It is worth nothing that HQT has, however, deemed it necessary to request approval of the Régie in the framework of rate file R-3669-2008 Phase 2, concerning among others Appendix C of the OATT

79. While FERC can require that certain public utilities and electricity transmitters under its jurisdiction to review their methods of determining transmission capacities (TTC and ATC), FERC has no jurisdiction over HQT's Quebec operations as these are exclusively the jurisdiction of the Régie

80. Besides, the actions undertaken by American transmission providers associated with harmonization as a result of FERC order 890 are subject to the approval of American regulatory authorities
81. BMI is of the opinion that it should be the same for all moves or changed that HQT wishes to instate in Quebec which are able to affect the rights of transmission clients

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

82. A market participant who desires to sell energy in the New England market and whose resources are situated outside of this market is subject to the condition of already having the rights to transmission service to and in this market (prior to selling into the market)
83. To this extent, ISO- NE offers a transmission service toward and through its network based on similar methods to those of the HQT OATT, also called an OATT
84. Without getting into all of its details, it's sufficient to specify that access to the New England market by way of Quebec is mainly limited to the HVDC Phase II interconnection between Quebec and Massachusetts
85. The designed transfer capacity of Phase II is 2000 MW (between the two points mentioned in the preceding paragraphs)
86. Consequently, obtaining priority transmission service rights of a firm nature over the American side of Phase II has always been essential for any participant (whose resources were in Quebec or flowed through Quebec) wishing to do business in the North-East American markets.
87. BMI, being assured to obtain firm transmission rights (subject to renewal) on the Quebec site (as previously established) has, over the past years, obtained and subscribed to the firm transmission rights of the same side on the American side of Phase II for total reserved capacities of 282 MW until 2013 (subject to renewal, with the exception of a 30 MW block), as shown in the service agreements produced in support of this complaint under the title **BMI-19**
88. BMI uses the subscribed firm transmission service on a continual basis to meet its supply obligations for which it is engaged or will engage in the New England and North-East American markets
89. HQP also holds firm transmission rights on the American portion of Phase II
90. HQP and BMI are the only market participants having resources situated in Quebec, holding firm, long-term transmission service rights on both sides of Phase II
91. Presently, the holders of the rights to firm transmission service on the American side cannot program more than 1200 MW of firm transmission service on Phase II for delivery to Sandy Pond, Mass.
92. BMI chose to acquire firm transmission service to be assured of the highest priority of access to the North-East American markets passing over Phase II
93. Since the transmission reductions are necessary as a result of constraints on the American network, the priority of transmission service of the reservations on the American side of Phase II determine the order of reductions for participants who desire to transmit regardless of price (price takers); therein lies the importance of having firm transmission rights on the American side

94. To the same extent, since the transmission reductions are necessary as a result of constraints on the HQ network, the priority of transmission service of the reservations on the HQT network determines the order of the reductions for all the participants who transmit towards to US; therein lies the importance of also having firm transmission rights on the American side
95. All market participants know the applicable rules and the transmission clients, on both the Quebec and ISO-NE side, have subscribed for transmission services will full knowledge of them
96. There is no joint attribution method of transmission rights for both sides of Phase II, in the sense that having firm transmission rights on one side of Phase II doesn't guarantee the same rights will be granted on the neighboring network, so the reason stated by HQT to implement harmonization (see file P-130-001) has no merit in the absence of such a mechanism of joint attribution.

Part V – The effective impact of harmonization

97. By its harmonization operation, HQT unilaterally puts a term in its contractual engagements toward – among others – BMI and refuses to respect its obligations under the terms of the OATT by substantially modifying its methods without the prior approval of the Régie
98. By its harmonization operation , HQT puts its affiliate HQP at an undue advantage to the detriment of BMI and other firm transmission clients in giving HQP effective control over access to Phase II (1200 MW) for all firm transmission energy transmitted on the Quebec network
99. The pretention of HQT to the effect that the implementation of an approach based on harmonization of the interconnections in function of the capacities of reception of the neighboring networks is purely a question of network management, and is irreconcilable with the position it adopted in regard to the changes requested in the framework of file R-3669-2008 Phase 2 and in particular Appendix C
100. BMI feels that such changes cannot be brought by HQT without an examination by the Régie of the foundation of the change, the pertinence, the impact of the rights of existing transmission clients and, if need be, mark the implementation
101. By refusing to recognize the full extent of its engagements under the terms of article 2.2 of the OATT and unilaterally implementing a new method of determining the ATC, HQT cause BMI a certain and irreparable damage by depriving the latter of the competitive advantage that it legally acquired and putting at risk its ability to respect its contractual obligations which it assumed under the faith of rights consented by HQT
102. By refusing the renewal of the firm, long-term, point-to-point transmission service subscribed, GQT deprived its transmission service client of its rights and privileges associated with this type of priority transmission service
103. By reducing the capacity of firm transmission, HQT deprives itself of additional revenues which has an impact of increasing the cost of transmission service assumed by the local load

Part VI – Damages resulting from the refusal of renewal

104. BMI, with many engagements with transmission providers relating to providing firm annual transmission services on both sides of Phase II has, subsequently, entered into long-term agreements for the same of energy, power and RECs in the North-East American markets
105. BMI has developed a strategic approach with a portfolio of resources designed to meet its commercial obligations towards its American supply customers
106. As a result of this strategy not only do the resources at the disposition of BMI in Ontario and certainly in Quebec contributes but also, BMI buys and resells energy in order to meet its engagement or to participate in day ahead or real time markets in NEPOOL, among others
107. An essential element of this commercial strategy is priority access to the New England and North-East American market by the reserved paths (MATI-HQT-NE and ON-HQT-NE) on HQT's network
108. Aside from direct financial losses, BMI will be in breach of contract and subject to important penalties if it is not able to meet its obligations to its supply clients
109. BMI is also engaged to provide certain American clients with power, be it with a contract for the supply of energy or to produce a distinct energy, a contract in which it must at all times be able to deliver at the request of the client
110. BMI will be subject to harsh penalties and in breach of contract if it cannot respect its engagements and it has accepted these agreements in conjunction with the firm, annual transmission power provided by HQT, which guaranteed access to the American markets by way of the reserved paths
111. BMI, in an effort to optimize its resources, has also sold RECs which are provided among other by the generating stations situated in Quebec and able to access the American market through the HQT-NE path
112. According to what has proceeded since 2007, the production associated with the La Lièvre resources, situated in Quebec, has, in essence, been transported to the North-East American markets by using the HQT-NE path and Phase II/ISO-NE
113. In addition, BMI has carried out hedge agreements to protect the value of a large portion of its anticipated deliveries to New England. To this extent, possible interruption, lack of firm transmission service, the double deliveries on the hedge agreements (?) will put BMI at risk of important financial losses on the hedge agreements without the benefit of the revenues from the deliveries
114. As for the New England market for day ahead or real time products, the loss of firm transmission service will deprive BMI of a significant competitive advantage
115. Aside from financial losses, penalties, and other direct costs, damage to the reputation and the confidence of clients regarding BMI and its affiliates' capacity to meet their obligations and engagements will be irreparable

Part VII – The right

The lawful aspects of the OATT

116. HQT has always recognized that the right to renewal of firm, long-term, point-to-point transmission service resulted from article 2.2 of the OATT

117. This right of renewal of transmission service commonly called “rollover right” is part of the methods of the HQT OATT since the first edition of the OATT by the Régie (D-2002-286 and D-2003-12)
118. In a continual manner, article 2.2 was included in all subsequent versions of the OATT approved by the Régie and the draft in the current OATT based on decisions D-2009-018 and D-2009-023 has not been significantly amended
119. Article 2.2 of the OATT assures to the transmission service client that the “right to continue to use HQT’s transmission service on the expiration, the rollover, or the renewal of their contract” on notification to HQT no later than 60 days prior to the end of the contract
120. The right to renewal of firm transmission service under article 2.2 of the OATT is effective at the moment of the initial request
121. Once the initial request for service is accepted (without restriction or condition), the transmission service client has a right to exercise the renewal whatever the constraints which could come up on the HQT network, the renewal is therefore a right subject to the conditions of reduction of services shown in article 13.6 of the OATT (under the obligation to accept a duration which is at least equal to all new competing requests, which is not the case here)
122. Contrary to the position affirmed by HQT, article 2.2 of the OATT grants to the transmission client more than a pre-emptive reservation and HQT errs when it treats a request for renewal of this type of service as a new request or as if were a renewal of firm, short-term point-to-point service
123. Article 13.2 of the OATT stipulates the following:
- “all firm, long-term, point-to-point transmission service will have a priority of access superior to firm, short-term, point-to-point and equal to that of the designated resources to serve local load and to those resources designated by the integrated network clients to supply its load”
124. Article 15.1 of the OATT stipulates the following:
- “15.1 General conditions: HQT will provide a firm and non-firm point-to-point transmission on, by, and across its transmission network to all transmission service clients who have satisfied the requirements of article 16”
125. Article 15.2 of the OATT stipulates the following
- “15.2 Determination of available transmission capacity: a description of the specific methodology followed by HQT to evaluate the available transmission capacity posted on HQT’s OASIS site (article 4) is found in Appendix C of this document. In the event that there is not sufficient capacity to respond to a new service request, HQT will respond by initiating a system impact study on the network”
126. Article 16.1 of the OATT reads as follows”

“16.1 Conditions to be met by transmission service clients: HQT will provide 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 request for service
- b. The transmission service client meets the criteria for creditworthiness as in article 11
- c. The transmission service client will have measures in place for all other transmission service necessary in order to make the delivery from the production to HQT before the beginning of service in accordance with Part II of the present
- d. The transmission service client agrees to pay for all necessary additions to the network factorable to the client conforming with Appendix J of the present, whether the transmission service client uses the service or not during the duration of its reservation
- e. The transmission service client has signed a point-to-point service agreement”

127. Article 13.4 of the OATT stipulates the following:

“3.4 Service agreements: HQT must offer a normal agreement relative to the firm, point-to-point transmission service (Appendix A) to an admissible client when the client submits a complete request to obtain firm, point-to-point transmission service. HQT deposits, to the Régie, the service agreements containing the information required under the terms of the present, in the 30 days after its signature”

128. Once the requests for firm, long-term, point-to-point transmission service were submitted by BMI, HQT determined that they were complete requests and its network was able to provide the requested service for the reserved capacities (see definition in article 1.4 of the OATT) and, consequently, offered service agreements for firm, long-term, point-to-point service to BMI

129. For the purpose of establishing the available transmission capacity, HQT followed the prescribed methods in Appendix C and, when necessary, Appendix D of the OATT and on each occasion, determined that its network was able to offer the specific service requested by BMI without condition or restriction pertinent to the present

130. No event or network condition able to put the reliability of the HQT network had come up since the aforementioned service requests. Appendices C and D were in no way modified or amended pertinent to the present debate, nothing justifies HQT’s not offering the subscribed services in conformity with the OATT

131. Recall that under article 16.2 of the OATT, the transmission service client is responsible for subscribing the transmission agreements required with third parties:

“16.2 Responsibility of the transmission service client for agreements with a third party: the programming arrangements which can be imposed by other electricity networks are the responsibility of the transmission service client who is requesting the service”

132. Consequently, no part of HQT’s oat supports of justifies the decision of HQT to refuse the renewal of transmission service subscribed by BMI

133. No part of the OATT authorizes HQT to refuse the renewal of a long-term for reasons put forth by HQT
134. It is contrary to the OATT to separate the right to continuation of service granted to the transmission service customer for the sole reason that HQT wished to harmonize the available transmission capacities with the neighboring networks without prior authorization from the Régie
135. In absence of a change, an event or a condition on HQT's network which would have put the reliability of the Quebec network at risk, nothing justifies the necessity of HQT to immediately implement such measures
136. HQT cannot justify by saying that it is just "managing its network" in attempting to respect FERC orders 890A and 729, since doing it irreparably affects the rights of its clients under the OATT and the existing service agreements
137. Under article 32 of the Law, the Régie has exclusive competence to fix or modify the OATT
138. Presently, the two adjacent networks operate their respective networks independently of one another, attributing and granting the rights associated with transmission service according to their own rules and carrying out the reductions according to the rules of their respective OATTs
139. There is no technical or operational reason to justify the imposition the loss of the rights of firm transmission service to BMI for the purpose of a modification to the ATC values for harmonization and even if there was one, the approval of the Régie for such a change of methodology and allocation of transmission rights necessitates the taking into consideration the appropriate transparency and non-discriminatory measures
140. The absence of prior consultation with transmission service clients constitutes a breach of HQT's obligation to consult its client and goes against the principles of transparency and equality which underlie the reform that invoke HQT
141. It is important to note that the firm transmission service attributed on the HQT-NE path has exceeded 1500 MW since June 1, 2009 and no event or network condition associated with this attribution arose
142. In addition, as of today, HQT continues to offer firm service for a reserved capacity more than the "harmonized" transmission capacity
143. In the circumstances which has been demonstrated, it appears that since July 2009 and up to today, there has been no urgency to harmonize the values between the two networks and to short-circuit the process engaged in rate file R-3669-2008 Phase 2

Part VIII – Order to safeguard

144. The Régie has the power under article 34 of the Law to make "any order that it deems necessary to safeguard the rights of concerned people"
145. BMI requests to the Régie to allow them to continue to use the firm transmission service which are the subject of the ON-HQT-NE service agreement (BMI-6) on the ON-HQT-NE path as of September 2, 2010 and up until a final decision has been made on this complaint
146. This request constitutes a temporary turnaround which does not prejudice the final decision to be delivered on this file

147. It should be noted that HQT, in the framework of complaint P-130-001 and in its May 21, 2010 letter, has shown no offer to consent to certain measures to safeguard in favor of BMI, notably, to the possibility of engaging with BMI in order to assure transmission service on the ON-NE path (210-200 MW) and to the conditions (with the necessary adaptations) which are described in D-2010-031 until a final decision intervenes in the framework of R-3669-2008
148. BMI contest all requests for suspension of file P-130-001 and the present complaint file until a decision is made in rate case R-3669-2008 Phase 2
149. BMI has a clear right to renewal of the firm transmission service which is the subject of the ON-HQT-NE service agreements under article 2.2 of the OATT

“2.2 Priority of reservation for existing firm service clients: Existing firm transmission service clients with a contract of the duration of one year or more have a right to continue to use HQT’s transmission service on the expiration, rollover, or renewal of their contract. This priority of transmission reservation does not depend on the fact that the existing client continues to purchase electricity from HQT, or chooses to purchase electricity from another provider. If, at the end of the duration of the contract, the transmission network of the transmission provider cannot respond to all transmission service requests, the existing firm transmission client must accept a contract duration at least equal to that of a new competing request from an admissible client and accept to pay the current fair and reasonable rate approved by the Régie for the service. This priority of reservation of transmission for existing firm service clients is a right which is continual and which can be exercised at the end of all firm contracts of a duration of one year or more, on the condition that the client provides written notice to HQT via OASIS at least 60 days prior to the end of the contract.”

150. BMI requests that the Régie deliver an order to safeguard according to the same terms and conditions as those given to BMI in the framework of file P-130-001 and the terms of decision D-2010-031
151. More precisely, the priority of reservation is a right which is continual unless the client fails to submit the required notice of renewal in the prescribed manner prior to the end of the contract
152. Without the requested order, BMI will be subject to serious and irreparable damage as explained in Part VI titled “Damages resulting from the refusal of renewal” in this complaint
153. Given the clear terms of article 2.2 of the OATT and the attached service agreements, in addition to the irreparable damage described above, the balance of the inconveniences clearly weighs in favor of BMI
154. In effect, HQT will suffer no damage by maintaining the existing service agreements. To the contrary, as the firm transmission service provides HQT with additional revenues
155. The proposition by HQT that BMI subscribe to non-firm transmission service is not acceptable as BMI will lose the rights (rights and privileges associated with the services which it pays in good and due form and has been since the commercial in-service date of the ON-HQT interconnection which is part of the ON-HWT-NE path and since April 1, 2007 for the MATI-HQT-NE path, as described above), without accounting

for the real difficulties that BMI will have with respect to meeting its various engagements already subscribed with third parties

156. The damage that BMI is hoping that the Régie will not allow is not the status quo and is therefore real and not hypothetical
157. The order requested will also serve to allow a temporary turnaround against the harmful effects of the foreseeable length of the upcoming procedures
158. It is urgent that the Régie grants the requested order to safeguard given the position adopted by HQT and the pending expiration of the ON-HQT-NE service agreement September 2, 2010
159. Recall that at this stage of the procedure, the Régie only needs to be satisfied with the proof presented “at face value” and can reevaluate the body of the proof in the framework of its final decision
160. Also, BMI respectfully agrees to meet all conditions required to obtain the provisional measures requested

Part IX – Amendments

161. BMI reserves the right to produce any additional proof, including expert reports, in support of the present complaint and such, under conditions to be determined by the Régie