

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

RÉGIE DE L'ÉNERGIE

HYDRO-QUÉBEC, AS A TRANSMISSION
PROVIDER ("HQT")

-and-

NEWFOUNDLAND AND LABRADOR
HYDRO ("NLH")

ARGUMENTATION PLAN
BY NEWFOUNDLAND AND LABRADOR HYDRO

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I INTRODUCTION

1. NLH is a corporation wholly owned by Nalcor Energy, which is held by the Government of Newfoundland and Labrador. NLH's operations include the transmission, generation and distribution of electricity throughout the Province of Newfoundland and Labrador, as well as the re-sale of a portion of power available from the Churchill Falls generating facility (located on the Upper Churchill River in Labrador), referred to as "recall power".
2. Hydro-Québec is a public utility constituted under section 3 of the *Hydro-Québec Act*¹. It is a public joint stock company, meaning a company whose shares are held entirely by the Government of Québec and allotted to the Minister of Finance.
3. HQT is an administrative division of Hydro-Québec, whose mandate is to manage the transmission of energy for its customers throughout the territory of Québec and commercialize the transmission capacity of the grid.
4. According to the HQT OATT, this division, HQT, must ensure transparent and non-discriminatory access to the transmission system in Québec for all customers of the wholesale electricity market. It must also make its interconnections available to its customers both within and outside of Québec.
5. HQP is another administrative division of Hydro-Québec, whose mandate is to generate power for the Québec market. It also sells its surpluses on wholesale markets and is active in arbitraging and purchase/resale transactions, thereby making it a client of HQT for point-to-point transmission service.
6. NLH is another client of HQT for point-to-point transmission service in relation to the recall power and transmission service requests relating to the Lower Churchill project. In this capacity NLH uses the HQT grid which is the vital link that connects to electricity markets in the Northeast region.

II THE PROCESS

7. This file began three years ago when on July 29th, 2008 HQT filed a motion to amend its OATT following FERC Order 890 and 890A.
8. In its decision 2008-116 rendered September 11, 2008 the Régie de l'énergie decided that the evidence filed by HQT with respect to FERC 890 and 890A was "insufficient".² On March 27, 2009 HQT filed new evidence as requested by the Régie de l'énergie.
9. On May 5th, 2009 Régie rendered Decision D-2009-056 and set for July 6 and 7, 2009 a hearing on this case.

¹ *Hydro-Québec Act*, R.S.Q. c. H-5, section 3: "There shall be a legal person called the "Commission hydroélectrique du Québec" or, in abbreviated form, "HYDRO-QUÉBEC".

² Décision D-2009-008 p. 2 et p.3 rendered February 12, 2009.

10. On June 30th, 2009 HQT filed a motion at the Régie to postpone the hearing to begin on July 6, 2009 at an unknown date after the pending NLH complaint on HQT interpretation of its own OATT.³
11. On July 22, 2009 in decision D-2009-097 Régie authorized the postponement of the case after the complaint NLH hearing.
12. The hearing on the complaints by NLH against HQT lasted from January 19, 2010 to February 12, 2010.
13. On February 19, 2010 Régie launched again the current process.
14. The hearing finally began on October 18, 2010 and will have lasted 34 days.⁴

III THE SCOPE OF THIS FILE

A. Making HQT's OATT consistent with or superior to FERC's Proforma

15. The wholesale electricity market opened in the U.S. at the end of the 1990s as a result of Order 888 that was issued by the FERC on April 24, 1996⁵. This Order, which established the Pro-Forma Open Access Transmission Tariff, was subsequently adopted by some Canadian provinces including the Province of Québec in order to export electricity into the U.S.
16. On March 5, 1997, the Government of Québec issued Order-in-Council 276-97 adopting the HQT OATT, based on the FERC Pro-Forma Tariff, thus creating a wholesale electricity market in Québec. This allows, for instance, HQ, through its U.S. subsidiary, Hydro-Québec U.S. ("**HQUS**"), to sell electricity on the U.S. markets on the condition that HQT offers access to its grid to persons wishing to transmit electricity in the Province of Québec. Such access must be non-discriminatory:

“Hydro-Québec s’apprête à déposer devant la « Federal Energy Regulatory Commission » une nouvelle demande visant à obtenir un statut de négociant sur le marché de gros de l’électricité accompagnée du règlement numéro 659 d’Hydro-Québec sur les conditions et les tarifs du service de transport pour l’accessibilité à son réseau, approuvé par le gouvernement;

Hydro-Québec pourra profiter de nouvelles occasions de vente aux États-Unis dès qu’elle pourra se prévaloir des conditions du nouveau cadre réglementaire américain;

³ Files P-110-1565, P-110-1597 and P-110-1678.

⁴ From October 18 to 22, 2010, October 26 and 27, 2010, from February 7 to 11, 2011, from February 14 to 18, 2011, April 15, 2011, from April 18 to 21, 2011, from May 2 to 5, 2011, from May 9 to 11, 2011 and the pleadings were held on June 28 and 29, July 4, 5, 6 and rebuttal by HQT on July 8 2011.

⁵ FERC, Order 888, Transmission Open Access. Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities (Final Rule), April 24, 1996.

il y a lieu pour le gouvernement d'approuver le plus tôt possible le règlement numéro 659 d'Hydro-Québec sur les conditions et les tarifs du service de transport pour l'accessibilité à son réseau et d'abroger le règlement numéro 652 d'Hydro-Québec sur les conditions et les tarifs du service de transport en gros de l'électricité;

[ENGLISH TRANSLATION] Hydro-Quebec is preparing to file a new application before the Federal Energy Regulatory Commission, together with its government-approved Hydro-Québec bylaw number 659 respecting the conditions and rates for open access transmission service in order to obtain trader status on the wholesale electricity market.

Hydro-Québec will benefit from new sales opportunities in the United States as soon as it can take advantage of the conditions of the new U.S. regulatory framework;

It is necessary for the government to approve, without delay, Hydro-Québec's bylaw number 659 respecting the conditions and rates for open access transmission service to its network and to repeal Hydro-Québec's bylaw number 652 respecting the conditions and rates for wholesale electric transmission service;⁶

17. Subsequently, in 1998, the Régie de l'énergie obtained jurisdiction to oversee the application of the HQT OATT pursuant to Order-in-Council 326-98 issued by the Government of Québec on March 18, 1998.
18. Under the Pro-Forma Tariff and the OATT, any person, who sells into, out of or through Québec, will have access on a non-discriminatory basis to the grid pursuant to the terms and conditions provided in the Pro-Forma Tariff.
19. The sole purpose of the Pro-Forma Tariff is to create a levelled playing field that is non-discriminating and provide equal access to all participants without favouring subsidiaries of a vertically integrated utility holding a natural monopoly on transmission and thus to grow a competitive wholesale market. This is still the case under the Order 890 regime.
20. FERC has no jurisdiction in Quebec and Régie has an exclusive jurisdiction on the OATT in the province.
21. Régie de l'énergie directed HQT to amend its OATT in order to improve transmission access, to reduce risk of discrimination and to render HQT administration of its OATT more transparent.
22. As a foreign utility the OATT proposed by HQT is not required to be a verbatim version of the American Pro Forma. However, the divergences introduced in the text need to be justified.

⁶ Order-in-Council 276-97, March 5, 1997, Gazette officielle du Québec, Part 2, March 12, 1997.

23. Régie's initiative serves two purposes: (1) to keep HQT OATT consistent with FERC pro forma OATT and (2) as a result of recent customer dissatisfaction⁷, HQT must improve its Tariffs and Conditions.

B. Reciprocity

24. An open access transmission tariff conforming to the requirements of Order 890 can be used to meet obligations incurred by a production affiliate when it seeks transmission service from a FERC-regulated transmission provider.
25. Consider section II.7 of ISO-NE's OATT:

“A Transmission Customer receiving transmission service under this OATT, including transmission service under Local Service Schedules, agrees to provide comparable transmission service that it is capable of providing to the Market Participants, Transmission Owners and/or the Schedule 20A Service Providers, and their distribution Affiliates on similar terms and conditions over facilities used for the transmission of electric energy in Canada or used for such transmission in the United States and that are owned, controlled or operated by, or on behalf of the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate Affiliates.”⁸ [Our emphasis]

26. Indeed, as affirmed in Order 890, a transmission provider can meet the reciprocity requirements by a bilateral agreement offering comparable transmission service or a safe harbor pro forma OATT or it can seek a waiver of the reciprocity requirement:

“[191]. We will also retain Order No. 888's three alternative provisions for satisfying the reciprocity condition, i.e.: a non-public utility that owns, controls, or operates transmission and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement, seek a waiver of the OATT reciprocity condition from the public utility, or file a safe harbor tariff with the Commission. Thus, for non-public utilities that choose to use the safe harbor tariff, its provisions must be substantially conforming or superior to the revised pro forma OATT in this Final Rule. A non-public utility that already has a safe harbor tariff must amend its tariff so that its provisions substantially conform or are superior to the revised pro forma OATT if it wishes to continue to qualify for safe harbor treatment. As the Commission stated in Order No. 888-A, a non-public utility may limit the use of its voluntarily offered safe harbor reciprocity tariff only to those transmission providers from whom the non-public utility obtains open access service, as long as the tariff otherwise substantially conforms to the pro forma OATT.¹³¹ We reiterate that these reciprocity requirements apply equally to all non-public utility transmission providers, including those located in foreign countries.”

⁷ Transcripts, May 2, 2011, pp.19-21, Mr. Gilbert Bennett Examination by Mr. André Turmel.

⁸ ISO NEW ENGLAND Open Access Transmission Tariff, p. 17. [Onglet 1]

27. We note that HQT counsel, in presenting HQT's pleading on June 29, 2011 indicated that reciprocity obligations under this provision of the pro forma OATT require the transmission-owning affiliate of a transmission user to provide comparable service to counterpart transmission provider.⁹
28. However, FERC expanded this obligation in Order 890 to require the comparable service be offered to all participants in RTOs and ISOs if the transmission user is selling into an RTO (see paragraph 190 of Order 890).
29. Dr. Robert Sinclair also confirmed the requirements of market-based rate (MBR) applicants as indicated in the Code of Federal Regulations (§35.37)¹⁰. MBR applicants must mitigate vertical market power by either (1) adopting a pro forma OATT or (2) otherwise offer comparable non-discriminatory access.
30. As a result, HQT's US market affiliate's activities impose an obligation on HQ as a result of taking transmission service in neighboring TSOs where there are reciprocity requirements and also resulting from compliance with HQUS' market-based rate requirements.
31. Hence, in order for the HQ affiliate to maintain these US privileges, HQT must satisfy the various FERC requirements. FERC's previous findings regarding HQ's marketing activities in the US are summarized in a 2005 Order:

“[24] [...] [T]he Commission requires an entity that seeks market-based rate authority but has a Canadian affiliate owning transmission facilities to demonstrate that its affiliate offers non-discriminatory access to those transmission facilities that competitors of the Canadian seller can use to reach United States markets. The Commission has previously found that Hydro-Québec's transmission tariff and TransÉnergie's transmission arrangements meet the standard that the Commission requires for open access transmission services under our jurisdiction. The Commission notes that the terms and conditions of those companies' transmission services are virtually identical to the Commission's pro forma tariff in all material respects. The main difference is that while the pro forma tariff refers to the Commission as the applicable regulatory agency, their tariffs refer to the Régie. Similarly, the tariffs substitute Canadian law for United States law -e.g. Canadian commercial law in lieu of the Uniform Commercial Code.”¹¹

32. It is clear from HQ filings in the US that HQT sees itself as is obliged to satisfy the transmission conditions in relation to the market based rate vertical market power requirements and does so by issuing a pro forma tariff consistent with Order 890 – this is supported by the evidence filed in the present file:

“This letter is to confirm to HQ Energy Services (U.S.) Inc. (“HQUS”) that Hydro-Québec TransÉnergie, the transmission division of Hydro-

⁹ Transcript, June 29, 2011, pp.137 and following, HQT's pleading on Theme 3.

¹⁰ Transcript, May 4, 2011, pp.230-235, Cross Examination of Dr. Robert Sinclair by Ms. Marie-Christine Hivon.

¹¹ H.Q. Energy Services (U.S.) Inc., Order accepting updated Market Power Analysis issued May 26, 2005, Docket Nos. ER97-851-012 ER97-851-013 ER97-851-015. [Onglet 2]

Québec (“TransÉnergie”), is currently in the process of adapting its Open Access Transmission Tariff (“OATT”) to the provisions of Order Nos. 890 and 890-A issued by the Federal Energy Regulatory Commission (“FERC”).

TransÉnergie understands that its OATT is relied upon by HQUS and Cedars Rapids Transmission Company Limited (“CRT”), both wholly-owned subsidiaries of Hydro-Québec, to mitigate any transmission market power concerns arising from HQUS’ and CRT’s affiliation with TransÉnergie under their respective market-based rate authorizations issued by FERC.”¹²

“HQUS’ application for market-rate authority in Docket No. ER97-851-000 and subsequent market power updates and change-in-status reports described the open access transmission tariff (“TransEnergie OATT”) governing service over the TransEnergie transmission network. In the HQUS MBR Order, the Commission found that any transmission market power concerns arising from HQUS’ affiliation with TransÉnergie had been mitigated by the TransÉnergie OATT.”¹³

33. Thus, Régie de l’énergie, in rendering its decision in this file, must bear in mind the FERC criteria that have to be met when it adopts the amendments to HQT OATT.
34. The Regie needs to assess HQT's proposed changes in the context of FERC's overall objectives for order 890 which were to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential:

“The final rule is designed to: (1) strengthen the pro forma open-access transmission tariff, or OATT, to ensure that it achieves its original purpose of remedying undue discrimination; (2) provide greater specificity to reduce opportunities for undue discrimination and facilitate the Commission’s enforcement; and (3) increase transparency in the rules applicable to planning and use of the transmission system.”¹⁴
35. The intention is to remedy and reduce opportunities for undue discrimination and to increase transparency. NLH is here today to present the perspective of a non-affiliated point to point transmission customer. These views are highly pertinent when considering the proposed changes with these objectives in mind.
36. For purposes of organization we will present the issues in sequence as they appear in the OATT. We would like to remind the Regie however up front that the issues of greatest concern to NLH are:
 - (i) the need for an open and transparent planning process that encompasses the 9 principles contained in FERC order 890 attachment K;

¹² Exhibit C-3-58, RNCREQ Expert Report, Annex 1, Letter of Ms. Isabelle Courville to Mr. Christian Brosseau dated June 18, 2008.

¹³ Exhibit C-3-58, RNCREQ Expert Report, Annex 2, H.Q. Energy Services (U.S.) Inc., Updated Market Power Analysis and Order No. 697 Compliance Filing, June 26, 2008.

¹⁴ FERC Order 890, summary, p. 1.

- (ii) rules regarding the designation and undesignation of resources - in particular the importance of attestation, rules for proper use of designation resources, the need for a definition for firm energy sales;
 - (iii) problems with the criteria for applying generator imbalance charges to generators that are synchronized with HQT's system; these charges should not apply to generators located outside the Quebec control area and therefore not to the Churchill Falls plant in Labrador; and
 - (iv) Attachment C-1 equations and the importance of ensuring consistency in the ETC firm equation to FERC principles.
37. The need to increase transparency is a common theme in these issues and this is consistent with the objective of reducing opportunities for undue discrimination.

IV HQT'S PROPOSAL AND NLH'S COMMENTS

A. PRELIMINARY REMARKS ON HQT "UNIQUENESS"

38. In this case, HQT has put forth the premise that the HQ transmission network has unique features that must be recognized in applying regulatory policy. This has been submitted at least twice; once as part of the basis for objecting to the need for an attachment K and once for the basis of calculating ATC values¹⁵.
39. While FERC has recognized in Order 890 that unique characteristics may justify departure from Order 890 principles, such uniqueness should be clearly demonstrated:
- “[1495] To the extent that individual transmission providers have unique circumstances or needs that justify a variation from the pro forma OATT, those parties can request such a variation and explain why their proposed variation is consistent with or superior to the requirements of the pro forma OATT in a section 205 filing.”
40. Given HQT's wide application of the "uniqueness" premise and given FERC's requirement that such uniqueness be demonstrated, it is worth examining HQT's argument in more detail.
41. HQT's basic argument is that its system exhibits two characteristics which make it unique: its asynchronous interconnections with adjacent systems and an absence of congestion. However, contrary to the characterization made by HQT, all of its major interconnections are not asynchronous. In fact, its largest interconnection (with Labrador) is a synchronous AC interconnection. Regarding the claimed lack of congestion, HQT has not provided adequate evidence that its system lack congestion.
42. In this case, HQT submitted the testimony of two experts; Mr. Philip Hanser (addressing ATC calculations) and Mr. Judah Rose (addressing Attachment K). In supporting their

¹⁵ Transcripts, October 20, 2010, pp. 80-83, Ms. Marie-Claude Roquet Examination by Ms. Marie-Christine Hivon. See also transcripts, October 20, 2010, pp. 84-86, Mr. François Hébert Examination by Ms. Marie-Christine Hivon. See also HQT's pleading on Theme 3, pp.25-40.

conclusions, both witnesses assert that HQT is unique, but neither fully or clearly demonstrates this fact.

(1) Nature of HQ Interconnections.

43. With regard to the nature of HQ interconnections, Mr. Hanser makes a series of statements in his written report in this case.

“For the purposes of our analysis, it is helpful to briefly describe certain characteristics and distinguishing features of HQT's transmission system and, as a result, how HQT's system differs from transmission systems in the U.S.

[...]

HQT is asynchronous with the other systems that make up the Eastern Interconnection. The HQT system is interconnected with neighbouring systems through either "controllable inerties or "radial inerties, which are blocks of generation or load which are islanded from HQT in order to be attached to another system through AC inerties. This means that HQT's grid is not influenced by power flows on other systems, as was demonstrated during the widespread power outage that occurred in the Northeastern U.S. and portions of Canada in August 2003.”¹⁶

44. Mr. Rose also makes similar statement:

“The TransEnergie system is an asynchronous power grid or Interconnection, one of only four major asynchronous grids in North America. It is the only major Canadian electrical transmission system not interconnected via Alternating Current (AC) connections with U.S. utilities or other Canadian utilities. Power flows between TransEnergie and other areas in the U.S. and Canada occur via conversion of AC power to Direct Current (DC) power which is then converted back to AC, and hence, power flows are highly controlled compared to AC interconnections which frequently have inadvertent “loop flows” with other systems in the Interconnection. TransEnergie’s special interface with the rest of North America decreases the need for transmission coordination, all else equal, and represents a superior element of the overall planning situation compared to U.S. conditions.”¹⁷

45. Both Mr. Hanser and Mr. Rose either ignore or overlook the Labrador interconnection with HQ. In fact, the Labrador interconnection is synchronous. The power flow in Labrador, and faults on the Labrador system, if not properly protected, can influence power flows on the HQT system.
46. The significance of this interconnection is evident in table 3 in HQT-20, document 2, p.15.

¹⁶ Exhibit HQT-28, document 1, paragraphs 19-23.

¹⁷ Exhibit HQT-12, document 1, pp. 10-11.

Table 3
Transfer capacity, receipt mode, 2008 ¹

SYSTEM	PATH	MW
Ontario		
	LAW-HQT	470
	DYMO-HQT	0
	OTTO-HQT	110
	CHNO-HQT	0
	P33C-HQT	0
	Q4C-HQT	140
	ON-HQT ²	0
	TOTAL	720
New York		
	CRT-HQT	100
	MASS-HQT	1,000
	TOTAL	1,100
New England		
	HIGH-HQT	170
	DER-HQT	0
	NE-HQT	1,700
	TOTAL	1,970
New Brunswick		
	TOTAL	770
Alcan		
	TOTAL	650
Brascan		
	MATI-HQT	250
	MAFA-HQT	95
	TOTAL	345
Churchill Falls		
	TOTAL	5,150
TOTAL		10,705

¹ Total transfer capacity (TTC) corresponds to the maximum capacity that can be transferred at a given moment in the year.

² The interconnection with Ontario went into commercial service in July 2009.

47. The Table shows the Synchronous connection between the Labrador system (Churchill Falls in the table) and the Quebec System accounted for 48% of HQT's import capability in 2008, and 43% once the Ontario 1250MW intertie is accounted for. In addition the capacity of this synchronous interconnection accounts for almost 15% of the 35,230MW Native Load¹⁸.
48. This conclusion is reinforced through the examination of the interconnection characteristics as presented on the Hydro Quebec Website:

“To offer customers a reliable system and transmission services tailored to their needs, Hydro-Québec TransÉnergie has multiple interconnections with systems in neighboring provinces and states.

¹⁸ See Table 10 of Exhibit HQT-20, document 2, p.24.

These facilities allow us to carry out interchanges with Newfoundland and Labrador, New Brunswick, Ontario and the U.S. Northeast.”

(<http://www.hydroquebec.com/transenergie/en/reseau-bref.html>)

49. Given the above facts, it is either wrong or misleading for the HQT experts to discuss HQT interconnection as a fully asynchronous system given the fact that Labrador system is synchronized with HQT. This is especially true because the Labrador interconnection alone represents a significant portion of total interconnection capacity (over 40%, as discussed above)¹⁹.

(2) Congestion

50. Just like in the case for the Quebec interconnection, Mr. Hanser and Mr. Rose also testify about congestion on the Quebec network, but neither expert fully supports their opinion.

51. Mr. Hanser states, in exhibit HQT-28, document 1, paragraph 23 states:

“As stated in HQT document "HQT Point" (exhibit HQT-27) the creation of the synthetic HQT Point was made possible both by the fact that TransEnergie’s system is asynchronous with other systems in the Eastern interconnection and because it is not subject to internal congestion. Given the absence of internal congestion in HQT’s system, there is no reason to list ATC for 240 distinct path pairs. Therefore, for planning purposes, HQT can be seen from external regions as a single Point.”
(Emphasis added)

52. The emphasized portion of Mr. Hanser’s statement, that the HQT system does not experience congestion, was not backed by any further testimony by Mr. Hanser that HQT lacks internal congestion.
53. Mr. Rose makes a number of similar statements regarding congestion in his written responses to an Information Request by UC/RNCREQ. Mr Rose cites a variety of statistics to support the claim that there is an absence of congestion on the HQT system. This includes citing statistics on transmission system “use rates”, Transmission Loading Relief events (TLRs); loss of load, and an NPCC audit.²⁰
54. While it certainly maybe the case that the studies analyzed by Mr. Rose did not exhibit congestion, Mr. Rose did not identify the complete set of studies which he did examine so as to demonstrate that his review of the system was sufficient, particularly for the 240 path pairs numerated by Mr. Hanser.
55. In addition HQT did not present any system stability studies or load flow analysis to demonstrate that for all of the point to point transmission service arrangement and for its Native load arrangement, or for the same 240 path pairs mentioned, its system does not experience congestion and is able to safely deliver all scheduled or desired wholesale

¹⁹ The nature of HQ interconnections has impacts on the concept of Imbalance (see paragraphs 183 to 205 of the present pleading) and on the concept of off-system resources (see paragraphs 130 to 154).

²⁰ Exhibit HQT-8, document 6.1, pp. 4-6.

electricity transfers simultaneously, as per the requirement in the OATT and as per the definition of congestion.

56. Further on the topic of system congestion Mr. Clermont was asked:

“Q.122 During system peak, does Beauharnois have to be on line and connected to the HQT system?”

R. Il n'y a pas de réponse absolue, totale et permanente à cet effet-là. L'exploitation du réseau est dynamique. Ça dépend de l'importance de la pointe, ça dépend des conditions sur le réseau. C'est difficile de donner une réponse absolue à votre question.

Q.123 Et si on parle d'en plus grande pointe, ce serait...

R. Écoutez, ce n'est pas impensable qu'en période de forte pointe, Beauharnois soit sur le réseau du Québec, effectivement. Mais ça peut arriver aussi en plein été que Beauharnois soit entièrement sur le réseau du Québec.”²¹

57. Thus indicating that he as well could not confirm that the HQ system is without congestion.

58. Mr. Rose was asked about out-of-merit dispatch:

Counsellor Turmel: If a system is dispatched out of order in real time, would you consider that to be congestion?

Mr. Rose: Yes.²²

59. Later, the question of out-of-merit dispatch is addressed:

Counsellor Turmel: So, I understand that you cannot quantify the cost of Hydro-Quebec production of changes to its preferred dispatch order that HQT may require?

Mr. Rose: I can't give a detailed quantitative [cost] but I can know that there is not that much difference between one hydro facility and another [...]²³

60. Mr. Rose also indicated he did not study HQT's preferred dispatch²⁴ and relative value of HQT reservoirs²⁵.

61. The U.S. Department of Energy / National Electric Transmission Congestion Study / 2009, uses the following definition for congestion (the glossary of terms which NERC uses in association with its reliability standards does not provide a definition):

²¹ Transcript, October 22, 2010, p. 101, Mr. Sylvain Clermont Cross-Examination by Ms. Paule Hamelin.

²² Transcript, October 21, 2010, p.98, Mr. Judah Rose Cross Examination by Mr. André Turmel.

²³ Transcripts October 21, 2010, pp. 120-121, Mr. Judah Rose Cross Examination by Mr. André Turmel.

²⁴ Transcripts October 21, 2010, p. 119, Mr. Judah Rose Cross Examination by Mr. André Turmel.

²⁵ Transcripts October 21, 2010, p. 120, Mr. Judah Rose Cross Examination by Mr. André Turmel.

“Congestion: The condition that occurs when transmission capacity in a specific location is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously.”²⁶

62. The HQ Transmission system, in accordance with its existing and proposed OATT, is planned and operated to provide Firm transmission service to both Native Load customers, as per section 36.2 of the OATT, and firm transmission service to its Point to Point customers, as per the preamble to section II, section 15.4, and other parts of the OATT's section II.
63. As a result, in order to provide the firm service that its customers are paying for, potential congestion is engineered to not be present in the system for those paths over which service has been provided.
64. This obligation to engineer away congestion is not present for the systems within the NE-ISO and ISO-NY markets.
65. The market designs of NY and NE are not structured to guarantee access to the transmission systems through the sale of firm or non-firm transmission rights²⁷.
66. In these markets, certain levels of congestion are acceptable in that the capital cost to relieve congestion through the expansion of the transmission system, is greater than the cumulative operating costs of running generation near the loads out of merit with all the other generators on the system, when the transmission system can not deliver energy to those local loads.
67. Hence congestion in these systems is permitted to remain and exist through the least cost system expansion plan.
68. Alternatively in Quebec, as a result of its market structure and as a result of HQT having sold, and agreeing to provide firm service in accordance with the OATT, it is required to ensure that sufficient transmission capability is present to provide for the safe delivery of all scheduled wholesale electricity transfers by the parties to whom firm service has been sold, those being Native / Network and Point to Point customers.
69. As a result of that obligation, potential transmission congestion is required to be engineered away during the planning and system study processes. This planning for lack of congestion is a common and necessary feature in markets which guarantees the capability of its customers to delivery energy through the sale of firm physical access to the system, such as is the case in Quebec's market structure, thus indicating that the HQT

²⁶ [Online] : http://congestion09.anl.gov/documents/docs/Congestion_Study_2009.pdf , p.105.

²⁷ In these markets congestion is specifically represented as a component of the total Locational Based Marginal price (LMP) for energy a various location. ISO New England speaks to LMP pricing on its website “frequently asked questions” page at the site <http://www.iso-ne.com/support/faq/lmp/>. It states: “How is the Locational Marginal Price calculated?” LMPs result from the application of a linear programming process, which minimizes total energy costs for the entire New England region, subject to a set of constraints reflecting physical limitations of the power system. The process yields the three components of LMPs: LMP (\$/MW) = Energy component + Loss component + Congestion component. The energy component is the same for all locations. The loss component reflects the marginal cost of system losses specific to each location, while the congestion component represents the individual locational marginal transmission congestion cost.

system is not unique in this regard. Planning for no congestion is not the same as achieving no congestion 100 percent of the time.

70. In demonstrating its lack of congestion HQ relies on the one year of transmission loading relief statistics which are presented in Exhibit HQT-15, document 2, as opposed to system load flow and stability studies.
71. U.S. Department of Energy / National Electric Transmission Congestion Study / 2009 uses the following definition with respect to transmission load relief.
- “Transmission loading relief: Procedures developed by NERC to deal with a situation in which a transmission facility or path is at or beyond its safe operating limit. In a TLR event, the grid operator can redispatch generation, reconfigure transmission, or curtail loads to restore the system to secure operating conditions.”²⁸
72. Of course TLR will only provide indication of the system's performance for the operating conditions associated with the paths over which energy is being delivered at the time TLR is undertaken. TLR statistics can not demonstrate that the entire system, those 240 path pairs, are free of congestion.
73. As a result, while both witness Mr. Hanser and Mr. Rose assert that the HQT system lacks congestion, neither adequately demonstrated this fact.
74. HQT should present an adequate system analyses to demonstrate that its system is not congested, until such evidence is presented this is not a valid conclusion to rely upon.
75. Regardless of the lack of evidence to support the contention of the absence of congestion on the HQT system, NLH questions the relevance of this claim in determining whether an attachment K is necessary in the HQT OATT. Based on the position that HQT plans its system to maintain an uncongested state, all service requests received by HQT are assessed to maintain this standard, thus increasingly the potential for upgrades to meet this high standard. This is an argument that supports the need for an open, transparent, coordinated planning process consistent with the principles espoused by FERC.

B. PART I OF HQT OATT – COMMON SERVICE PROVISIONS

i) Section 1 – Definitions

Absence of a definition of non-firm Energy Sales

76. Termination of designation is required for firm sales but not for non-firm sales. The determination of what is a firm sale, and what is a non-firm sale, is obscured in the case of HQ by the fact that the HQT OATT has no definition for non-firm sales.
77. The FERC 890 OATT does have a definition for non-firm sales and FERC’s rulings discuss the topic extensively. On the topic of what qualifies as a firm sale, FERC offer the following from 890–B:

²⁸ [Online] : http://congestion09.anl.gov/documents/docs/Congestion_Study_2009.pdf , p.109.

“[238] In light of these competing considerations, the Commission in Order No. 890 carefully crafted the definition of Non-Firm Sales to ensure that, pursuant to section 30.4, network resources are not used to support sales in a way that creates conflicting incentives regarding the designation and use of network resources [...].”

78. We nevertheless affirm the underlying conclusion in Order No. 890-A that designated network resources may be used to support sales that permit curtailment without penalty to serve the seller’s native or network load and amend section 30.4 of the pro forma OATT to make that clear:

“[1016] We also agree with Southern that, under normal circumstances, a system sale that permits curtailment without penalty to serve the seller’s native load would fall within the definition of a Non-Firm Sale since the seller would have the right to rely on that capacity in the event it is needed to serve native load, which is the Commission’s principal concern in restricting sales from designated network resources to Non-Firm Sales.”

79. As the Commission explained in Order No. 890-A, non-firm transactions give the seller the right to rely on the underlying capacity in the event it is needed to serve native or network load. In Order No. 890-A, the Commission characterized this as its principal concern in restricting sales from designated network resources to non-firm sales.

80. Consider also paragraph 240 of Order 890-B:

“[240] We nevertheless affirm the underlying conclusion in Order No. 890-A that designated network resources may be used to support sales that permit curtailment without penalty to serve the seller’s native or network load and amend section 30.4 of the pro forma OATT to make that clear. As the Commission explained in Order No. 890-A, those transactions give the seller the right to rely on the underlying capacity in the event it is needed to serve native or network load.¹⁵⁹ In Order No. 890-A, the Commission characterized this as its principal concern in restricting sales from designated network resources to non-firm sales.”

81. HQT should adopt the FERC definition of non-firm sales, which is as follows:

“1.29. Non-Firm Sale:

An energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.” (Order 890 OATT)

82. We recommend that this definition to the effect that a sale on the Day Ahead market has to be considered a firm sale be included in the text of the HQT OATT. Consider paragraphs 238 and 239 of Order 890-B:

“[238] In light of these competing considerations, the Commission in Order No. 890 carefully crafted the definition of Non-Firm Sales to ensure that, pursuant to section 30.4, network resources are not used to support sales in a way that creates conflicting incentives regarding the

designation and use of network resources. Petitioners have failed to demonstrate that elimination or amendment of this definition is either necessary or appropriate. TAPS contends that the obligation of a seller to pay the real-time LMP if it fails to deliver in response to bids in a day-ahead market may be negligible and, therefore, such sales should be considered non-firm for purposes of the network resource rules. While that obligation may be minimal in some circumstances, it may be substantial in others, particularly during conditions when sellers are most likely to want or need to recall such power. The sales that TAPS argues are non-firm enough to be made from a network resource do have financial implications, potentially creating disincentives to interrupt delivery if capacity is actually needed for native or network load, even though ATC may have otherwise been set aside for that use.

[239] We agree with TAPS, however, that the language of the definition does not accurately capture the clarification provided in Order No. 890-A that designated network resources may be used to support third-party sales that permit curtailment without penalty to serve the seller's network or native load.¹⁵⁸ There the Commission stated that such sales fall within the definition of Non-Firm Sales since the seller would have the right to rely on that capacity in the event it is needed to serve native load. Upon further consideration, we conclude that such sales do not fall within the definition of Non-Firm Sales because they do not permit interruption for any or no reason, as required by the definition. We therefore grant rehearing of the determination that such sales fall within the definition of Non-Firm Sales.”

83. Finally, NLH noted that HQT's pleading for Theme 16 – Definitions – HQT does not object to include this definition in the HQT OATT (see paragraphs 30-31 of HQT's pleading).

ii) **Section 3 – Ancillary Services**

3	<p style="text-align: center;">Ancillary Services</p> <p>The Transmission Provider is required to provide, and the Transmission Customer is required to purchase, the following Ancillary Services: (i) system control, and (ii) voltage control. The Transmission Provider is required to offer the following Ancillary Services to the Transmission Customer serving a load in the Transmission Provider's Control Area: (i) frequency control, (ii) energy imbalance service – delivery, (iii) energy imbalance service – receipt, (iii) (iii) operating reserve – spinning reserve, and (iv) operating reserve – non-spinning reserve. The Transmission Customer serving a load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or based on its own generation. <u>The Transmission Provider is required to provide to the extent it is physically feasible to do so from its resources or from resources available to it, Generator imbalance service when Transmission Service is used to deliver energy from a generator synchronized to its Transmission system. The Transmission Customer using Transmission Service to deliver energy from a generator synchronized to the Transmission Provider's system is required to acquire Generator imbalance service, whether from the Transmission Provider, from a third party, or by self-supply.</u></p> <p>The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired or provided the Ancillary Services from a source located in the Transmission Provider's Control Area. The Transmission Customer shall state in its Application which Ancillary Services it will purchase from the Transmission Provider. <u>A Transmission Customer that exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or an Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved is required to pay for all of the Ancillary Services identified in this section that were provided by the Transmission Provider associated with the unreserved service. The Transmission Customer or Eligible Customer will pay for Ancillary Services based on the amount of transmission service it used but did not reserve.</u></p> <p>In the event of unauthorized use of Ancillary Services by the Transmission Customer, the latter shall pay the Transmission Provider 150% of the applicable rates contained in Schedules 1 through 7.</p> <p>The specific Ancillary Services, and rates, will be offered by the Transmission Provider under the conditions described in the attached Schedules, which are an integral part of the provisions herein. Sections 3.1 through 3.7 below list the seven Ancillary Services that apply to customers under Parts II and III herein; Sections 3.1 and 3.8 specify those that apply to the Native-Load</p>
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Transmission Service under Part IV herein.

84. NLH refers the Regie to paragraphs 190 to 213 in this pleading document where the inconsistencies of the proposed wording with FERC proforma 890 is explained. The proposed wording in HQT OATT Section 3 of Schedule 4 which applies generator imbalance charges to generators synchronized with the HQT system instead of those in the Quebec control system is inconsistent with FERC order 890 and contrary to industry practice.
85. NLH recommends that the word « synchronized » should not be used in section 3 of Schedule 4 – instead generator imbalance charges should be applicable to generators with the HQT control area.

iii) **Section 11 – Creditworthiness**

11 Creditworthiness and Payment Risk Management

11.1 Creditworthiness: For the purpose of determining the ability of the Transmission Customer to meet its obligations related to services set forth herein, the Transmission Provider may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices.

11.2 Payment Risk Management: In addition, the Transmission Provider may require the Transmission Customer to provide and maintain in effect during the term of the Service Agreement, as security to meet its responsibilities and obligations under the provisions herein and to protect the Transmission Provider against the risk of non-payment in accordance with standard commercial practices, security in one or another of the following forms for a reasonable amount set in proportion to the value of the Transmission Services requested or planned by the customer: (i) an irrevocable and unconditional letter of credit, (ii) an on-demand guarantee provided by a third party, (iii) any other form of security proposed by the Transmission Customer and acceptable to the Transmission Provider. In addition to requiring that security be provided and maintained, the Transmission Provider may at any time require any reasonable additional security if, in its opinion, after a credit review of the Transmission Customer, the financial capacity of the latter to meet its responsibilities and obligations contained in the Service Agreement in force is substantially reduced or the value of Transmission Services requested or planned by the customer, including the associated responsibilities and obligations, no longer meet the Transmission Provider's credit criteria, which may vary with changes in the financial situation of the customer or its guarantors, with the customer's Transmission Service reservations on the Transmission Provider's system or with any other commitments entered into by the Transmission Customer. Any failure or omission by the Transmission Customer to meet the Transmission Provider's credit criteria, to provide information required under the provisions herein, and to provide and maintain in effect security required by the Transmission Provider, including any additional security required by the latter, is a default. Following written notice from the Transmission Provider, if this default is not remedied within three (3) working days, the Transmission Provider may terminate any reservation of Transmission Service or any other service or obligation and require immediate payment of all amounts due by the Transmission Customer.

11.3 Transmission Customer Default: In the event that the Transmission Customer is in default pursuant to Section 7.3 or 11.2 herein, the Transmission Provider has the right to name a date at which it intends to terminate any Transmission Service contract binding the Parties. The Transmission Provider shall then calculate all amounts due to it, including repayment for Network Upgrades it incurred and interest on unpaid amounts calculated pursuant to Section 7.2, and notify the Transmission Customer of the net amount then owing.

The Transmission Provider's Creditworthiness procedures are described in Attachment L.

86. See comments on Attachment L below in paragraphs 379 to 380.

C. PART II OF HQT OATT – POINT-TO-POINT TRANSMISSION SERVICE

i) **Section 15 – Service Availability**

15.4 Obligation to Provide Transmission Service Requiring

Transmission System Expansion or Modification, Redispatch or Conditional Curtailment:

(a) If the Transmission Provider determines that it cannot accommodate a Completed Application for Point-to-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider shall use due diligence to expand or modify its Transmission System to provide the requested Transmission Service, provided the Transmission Customer agrees to compensate the Transmission Provider for such costs pursuant to the terms of Section 27. The Transmission Provider shall be consistent with Good Utility Practice in determining the need for Network Upgrades and in the design and construction of such upgrades. This obligation applies only to those facilities that the Transmission Provider has the right to expand or modify.

~~(b) If the Transmission Provider determines that it cannot accommodate a Completed Application for Long-Term Firm Point-to-Point Transmission Service because of insufficient capability on its Transmission System, upon reception of a written request from the Transmission Customer, the Transmission Provider will use due diligence, upon reception of a written request from the Transmission Customer, to determine whether to provide redispatch from resources in the Transmission Provider's Control Area is feasible considering the conditions set out below and, in cases when it is feasible, shall redispatch said resources until: (i) Network Upgrades are completed for the Transmission Customer; (ii) the Transmission Provider determines through a biennial reassessment that it can no longer reliably provide the redispatch; or (iii) the Transmission Customer terminates the service because of redispatch changes resulting from the reassessment. In cases when redispatch is feasible, the Transmission Provider shall not unreasonably deny self-provided redispatch or redispatch arranged by the Transmission Customer from a third party resource. The Transmission Provider is only required to provide redispatch under the following conditions: (i) resources are available for that purpose for the duration of the requested service; (ii) the customer has obtained the consent of the owner of the resource(s) involved; (iii) the Transmission Provider has determined that redispatch is technically feasible and not of such a nature as to compromise system reliability and stability; (iv) except in the cases covered by Section 19.7, the entire service requested can be provided through redispatch without Network Upgrades; and (v) the customer agrees to compensate the Transmission Provider pursuant to Section 27. (c) If the Transmission Provider determines that it cannot accommodate a Completed Application for Long-Term Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, upon reception of a written request from the Transmission Customer, the Transmission Provider will offer the Firm Transmission Service with the condition that the Transmission Provider may curtail the service prior to the curtailment of other Firm Transmission Service for a specified number of hours per year or during System Condition(s). If the Transmission Customer accepts the service, the Transmission Provider will use due diligence to provide the service until: (i) Network Upgrades are completed for the Transmission customer; (ii) the Transmission Provider determines through a biennial reassessment that it can no longer reliably provide such service; or (iii) the Transmission Customer terminates the service because the reassessment increased the number of hours per year of conditional curtailment or changed the System Conditions potentially leading to a curtailment of service.~~

87. In the proposed changes to section 15.4, HQT is adding the fact that it will use due diligence, upon reception of a written request from the Transmission Customer, to determine whether to provide redispatch from resources in the Transmission Provider's Control Area is feasible or whether to provide conditional firm service..

88. In section 15.4 of the Pro forma 890 OATT, there is no reference to the Transmission Customer's obligation to file a written request in order for the Transmission Provider to assess the feasibility to provide redispatch or to offer conditional firm service. .

89. NLH recommends that these references should be deleted in the HQT OATT.

ii) **Section 19 – Additional Study Procedures for Point-to-Point Transmission Service Requests**

~~**19.9 Failure to Meet Study deadlines:** Sections 19.3 and 19.4 require the Transmission Provider to use due diligence to meet study completion deadlines for System Impact Studies and Facilities Studies. (i) The Transmission Provider is required to file a notice with the Régie in the event that more than twenty (20) percent of non-Affiliates' System Impact Studies and facilities Studies completed by the Transmission provider in any two consecutive calendar quarters are not completed within study completion deadlines. Such notice must be filed within thirty (30) days of the end of the calendar quarter triggering the notice requirement. (ii) For the purposes of calculating the percent of non-Affiliates' System Impact Studies and Facilities Studies processed outside of study completion deadlines, the transmission Provider shall consider all System Impact Studies and Facilities Studies that it completes for non-Affiliates during the calendar quarter. The percentage should be calculated by dividing the number of those studies which are concluded on time by the total number of completed studies. The Transmission Provider may provide an explanation in its notification filing to the Régie if it believes there are extenuating circumstances that prevented it from meeting study completion deadlines.~~

90. NLH notes that unlike the FERC 890 OATT, HQT is not proposing any penalties applied if certain minimum standards for timely completion of studies for non-affiliates are not achieved. In the FERC OATT, the penalty is \$500 per day beyond the 60 day deadline for completion, if a minimum standard is not maintained.

D. PART III OF HQT OATT – NETWORK INTEGRATION TRANSMISSION SERVICE

i) Section 28 – Nature of Network Integration Transmission Service

91. A fundamental tenant of FERC's open access policy is the concept of comparable service between Network and Native load customers. This intent is articulated in the pre-amble to Section III of the Order 890 OATT where it states:

“The Transmission Provider will provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained in the Tariff and Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native Load customers.”

92. Similarly the HQT OATT in its pre-amble states equivalent intentions:

“The Transmission Provider shall provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained herein and in the Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its present and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve Native-Load Customers pursuant to the provisions of Part IV herein.”

93. However, while Section 28.2 of the FERC pro forma OATT reinforces the concept of comparability by specifically mentioning the requirement for Network and Native load customers to designate resources in a similar manner; the HQT OATT is silent on the matter. Section 28.2 of the FERC OATT states:

“28.2 Transmission Provider Responsibilities: The Transmission Provider will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice and its planning obligations in Attachment K in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System. *The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff. This information must be consistent with the information used by the Transmission Provider to calculate available transfer capability.* The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice and Attachment K, endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own

generating and purchased resources to its Native Load Customers.”
[Emphasis added]

94. Alternatively Section 28.2 of the HQT OATT states:
- “28.2 Transmission Provider Responsibilities: The Transmission Provider shall plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's system. The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice, endeavor to construct and commission sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider delivers resources to Native-Load Customers.”
95. Missing from the HQT adaptation is the critical reference to treating network customers on a comparable basis with respect to designating resources. The missing passage in the HQT version is highlighted in the quoted portion of Order 890 above.
96. The importance of treating network customers on a comparable basis is capsulated in paragraph 1506 of the Order 890:
- “[1506] In response to TDU Systems’ request for clarification that the process of network resource designation should be the same for all users, we note that section 28.2 of the pro forma OATT already provides that “[t]he Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff.” We encourage parties to utilize the Commission’s Enforcement Hotline to report suspected abused of this process.”
97. This is addressed again in paragraph 1580 of the Order 890:
- “[1580] In response to comments by EEI, NRECA, and Suez Energy NA, we reiterate that all parties, including transmission providers serving their native loads, are subject to these requirements for designation and undesignation of network resources. Section 28.2 of the pro forma OATT clearly provides that transmission providers are required to designate resources and loads in the same manner as any network customer. We encourage parties suspecting that transmission providers or other network customers are not conforming to the requirements for designating or undesignating network resources to report their concerns using the Commission’s Enforcement Hotline.”
98. To ensure that comparability of service is maintained within the HQT OATT HQT should be required to introduce into section 28.2 of its OATT the fact that the process of designation shall be the same for both Network and Native Load customers.

ii) Section 29 – Initiating Service

<p>29.2(v) A description of Network Resources (present and 10-year projection), which shall include. for For each <u>on-system</u> Network Resource, <u>such description shall include:</u></p> <ul style="list-style-type: none"> - The size of the unit and capacity from that unit to be designated as a Network Resource, as well as any generating station that may supply a Network Resource - VAR capability (both leading and lagging) of all generators - Operating restrictions <ul style="list-style-type: none"> - Any periods of restricted operation throughout the year - Maintenance schedules - Minimum loading level of the unit - Normal operating level of the unit - Any must-run unit designations required for system reliability or contract reasons - The list of management measures for redispatch - Arrangements governing sale and delivery of power to third parties from generating facilities located in the Transmission Provider's Control Area, where only a portion of the unit's output is designated as a Network Resource; <p><u>For each off-system Network Resource, such description shall include:</u></p> <ul style="list-style-type: none"> • <u>Identification of the Network Resource as an off-system resource</u> • <u>Amount of power to which the customer has rights</u> • <u>Identification of the control area from which the power will originate</u> • <u>Delivery point(s) to the Transmission Provider's Transmission System;</u> • <u>Transmission arrangements on the external transmission system(s)</u> • <u>Operating restrictions, if any</u> <ul style="list-style-type: none"> - <u>Any periods of restricted operations throughout the year</u> - <u>Maintenance schedules</u> - <u>Minimum loading level of unit</u> - <u>Normal operating level of unit</u> - <u>Any must-run unit designations required for system reliability or contract reasons</u> • <u>Approximate variable generating cost (\$/MWH) for redispatch computations;</u>

99. We refer the Régie to NLH's comments regarding the inconsistencies between part III and Part IV regarding transmission customers obligations on the issue of off-system resources presented below in paragraphs 134 to 158.

29.2 (viii) A statement signed by an authorized officer from or agent of the Network Customer attesting that all of the network resources listed pursuant to Section 29.2(v) satisfy the following conditions: (1) the Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) the Network Resources do not include any resources, or any portion thereof, that are committed for sale to nondesignated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program.

100. We refer the Régie to NLH's comments regarding the inconsistencies between part III and Part IV regarding transmission customers attestation obligations presented below in paragraphs 104 to 133.

iii) Section 30 – Network Resources

30.2 Designation of Network Resources: Network Resources shall include all generation owned or purchased by the Network Customer and designated to serve Network Load under the provisions herein. Network Resources cannot include resources, or any portion thereof, that are committed for sale to non-designated third-party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. Any owned or purchased resources that were serving the Network Customer's loads under firm agreements entered into on or before the Service Commencement Date shall initially be designated as Network Resources until the Network Customer modifies the designation of such resources. ~~A designation of a new Network Resource shall be made through that site by the Network Customer, e-Transmission Provider's OASIS by a request for modification of service pursuant to an Application under Section 29.~~ This request must include a statement that the new network resource satisfies the following conditions: (1) the Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) The Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. The Network Customer's request will be deemed deficient if it

does not include this statement and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.

101. We refer the Régie to NLH's comments on the issue of Designation of Distributor Resources presented below in paragraphs 159 to 168.

30.4 Operation of Network Resources: The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus Non-Firm Sales delivered pursuant to Part II of the Tariff, plus losses, plus power sales under a reserved sharing program, plus sales that permit curtailment without penalty to serve its designated Network Load. This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System. For all Network Resources not physically connected with the Transmission Provider's Transmission System, the Network Customer may not schedule delivery of energy in excess of the Network Resource's capacity, as specified in the Network Customer's Application pursuant to Section 29, unless the Network Customer supports such delivery within the Transmission Provider's Transmission System by either obtaining Point-to-Point Transmission Service or utilizing secondary service pursuant to Section 28.4. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable. In the event that a Network Customer's schedule at the delivery point for a Network Resource not physically interconnected with the Transmission Provider's Transmission System exceeds the Network Resource's designated capacity, excluding energy delivered using secondary service or Point-to-Point Transmission Service, the dispositions of section 13.7 d) will apply.

102. We refer the Régie to NLH's comments regarding the inconsistencies between part III and part IV in relation to Operation of Network and Distributor Resources, respectively, presented below in paragraphs 173 to 188.

E. PART IV OF HQT OATT – NATIVE-LOAD TRANSMISSION SERVICE

i) Section 36 – Nature of Native-Load Transmission Service

36.3 Secondary Service: The Distributor may use the Transmission Provider's Transmission System to deliver energy to its loads from resources that have not been designated as Distributor Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. All other requirements of Part IV of the Tariff (except for transmission rates) shall apply to secondary service. Deliveries from resources other than designated resources shall have a higher priority than any Non-Firm Point-to-Point Transmission Service under Part II herein.

103. We refer the Régie to NLH's comments regarding the term QCRND firm and QCRND nonfirm – as noted in paragraphs 219 to 252.

ii) Section 37 – Conditions Precedent to Receiving Service from the Transmission Provider

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

- The size of the unit and capacity from that unit to be designated as Distributor Resource, including generating stations used to deliver heritage pool electricity and those used to supply any other Distributor Resource located in the Transmission Provider's Control Area- VAR capability (both leading and lagging) of all generators
- Operating restrictions:
- Any periods of restricted operation throughout the year
- Maintenance schedules
- Minimum loading level of the unit
- Normal operating level of the unit
- Any must-run unit designations required for system reliability or contract reasons
- The list of management measures for Redispatch
- Description of the purchased power designated as a Distributor Resource, including source of supply, Control Area location, transmission arrangements and Point(s) of Receipt on the Transmission Provider's Transmission System;

37.1 (v) A statement signed by an authorized officer from or agent of the Distributor attesting that all of the Distributor resources listed pursuant to Section 37.1(iii) satisfy the following conditions: (1) the Distributor owns the resource, has committed to purchase generation for the amounts approved by the Régie, or pursuant to an executed contract, or has committed to purchase

generation where execution of a contract is contingent upon the availability of transmission service under Part IV of the Tariff; and (2) the designated Distributor Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Distributor's Native Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program.

Requirements for appropriately designating a resource as a Distributor Resource – Attestation

104. One of the most important issues raised by Order 890 in the context of Quebec is the issue of Attestation. Attestation requires a signed statement by an agent of the network transmission customer affirming that the designation of network resources has been done in accordance key requirements of the tariff, including that the network customers owns or has a purchase contract for the designated resources as per section 29.2 of both the FERC and HQT tariffs.
105. As NLH witness Dr. Robert Sinclair testified, “Attestation helps ensure that the transmission customer is not abusing the designation process to retain transfer capability and exclude competitors.”²⁹
106. Dr. Robert Sinclair explained that without attestation, the distribution division of HQ, HQD could designate a resource in an amount that exceeds the actual rights to the resource. HQT, the transmission division of HQ, uses native-load designation quantities to calculate ATC. If HQD over states the amount of capacity it is entitled to on any specific resource, HQT will put aside too much capacity on the interconnections and reduce ATC. In this way, competitors to the production division of HQ, HQP would not have access to that capacity³⁰.
107. As an example, consider Churchill Falls which HQD designates as a Native Load resource. While HQ would not release the actual designation of this resource, it can be inferred from the OASIS website that is designated at over 4800 MW. Yet, HQ only has firm rights to Churchill Falls of less than 4100 MW. HQT calculates the ATC using the 4800 MW amount, which provides it an additional 700 MW of transfer capability on the LAB-HQT interconnection.³¹
108. In Order 890, FERC shows the seriousness of this issue by assigning civil penalties to network customers that do not properly designate the quantities of their resources:

Paragraph 1523 of the 890 final rule states;

“In the event that the transmission provider or any other network customer designates a network resource that it does not own or has not committed to purchase or that does not comport with the requirements for designated network resources, we will deem the network customer to be in violation of the pro forma OATT and will consider assessing civil

²⁹ Transcript, May 2, 2011, pp. 59-60, Dr. Robert Sinclair Cross-Examination by Mr. Éric Dunberry.

³⁰ Exhibit C-13-44, Dr. Robert Sinclair Powerpoint presentation, pp.30-32, Transcripts, May 2, 2011, pp. 57-65, Examination of Dr. Robert Sinclair by Mr. André Turmel, Transcripts, May 4, 2011, pp. 181-182, Cross-Examination of Dr. Robert Sinclair by Mr. Éric Dunberry.

³¹ This issue is pending before the Québec Superior Court, *Newfoundland and Labrador Hydro vs. Régie de l'énergie and Hydro-Québec*, no. 500-17-065300-116.

penalties on a case-by-case basis, consistent with the Commission's Policy Statement on Enforcement.”

109. Despite this obvious importance, HQT has proposed language for section 37.1 (v), which if approved, will avoid the full Order 890 attestation requirements for Distributor Resources.
110. This is because the proposed OATT text does not include a requirement for the distribution division of HQ, or HQ on behalf of that division, to attest to the fact that the information provided for Distributor Resources was done so in accordance with the requirements of section 37.3 (iii) of the OATT, and it does not require HQ to attest to all the qualifiers required for Designating Resources as identified in section 38.1.³²
111. In addition to the fact that it is proposed that HQ not be required to attest to the fact that designated resource information is provided in a manner consistent with section 37.1 of the OATT, the proposed HQT OATT will not require the distributor to attest to the fact that it owns generation, or has a contract to purchase generation from, the resources that it wishes to designate.
112. In support of the requirement to have HQ, on behalf of its distributor, attest to the fact that it owns or purchases the generation which it is designating, section 38.1 of the OATT can be referenced.

“38.1 Designation of Distributor Resources: Distributor Resources shall include all generation purchased by the Distributor and designated to supply Native Load under the provisions herein. Distributor Resources cannot include resources, or any portion thereof, that are committed for sale to third-party load other than the Native Load or otherwise cannot be called upon to supply the Distributor's Native Load on a non interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. [...]“

113. Hence, section 38.1 specifies two requirements for appropriately designating a resource as a Distributor Resource. The first being the fact that the Distributor or HQ on behalf of its distribution division has the authority, through ownership or through contract to actually perform the designation process for the facility and thereby have the transmission division set aside the transmission system capacity required by the distributor have energy delivered from specified resources.. If the Distributor does not have a right to generation from a facility, than it can not contemplate designating it as a resource to serve Native load.
114. The wording for the proposed HQT OATT does not require the Distributor, or HQ when acting as the distributor to attest to the basic fact that it has the authority to designate, as required by Order 890. The proposed HQT OATT will only require the distributor to attest to the fact that generation is not interruptible.

³² Transcripts, February 9, 2011, p. 11 and following, Examination of Mr. Sylvain Clermont by Mr. Éric Dunberry. See also transcripts, May 2, 2011, p.53 and following, Examination of Dr. Robert Sinclair by Mr. André Turmel.

115. As Dr. Robert Sinclair has described, the validity of designated resource information is important because it directly affects ATC values (and thus the market)³³. In addition it also offers the Transmission Provider greater certainty in how it plans its transmission system in accordance with section 28.2 of the OATT, how the costs of expansion are allocated to establish rates as per section 25, how it properly offers Network and Secondary transmission services in sections 28.3 and 28.4, and how it restricts the use of service in 28.6. In the end the transmission division of HQ, HQT, is required to have accurate information to administer its OATT.
116. Dr. Robert Sinclair further explains that, because of the Heritage Pool, HQD does not directly take an ownership interest in the native-load resources and, therefore, according to HQT's witness Clermont, HQD cannot attest to ownership or purchase rights.³⁴
117. In making the HQT pleading on June 29, 2011, Mr. Dunberry appears confused by Dr. Robert Sinclair's proposal. He suggests that what Dr. Robert Sinclair is proposing to do is to require HQD to own or have title to Distributor resources³⁵. This is absolutely not the case.
118. NLH is not asking that the Distributor take ownership or title to distributor resources (except for post-Heritage pool resources, of course). Dr. Robert Sinclair is very clear that he is proposing to implement an attestation provision to meet Order 890 Principles adapted to HQT's situation³⁶.
119. Mr Clermont has testified and as Dr. Robert Sinclair agrees, HQD does not own resources nor does it have title to PPAs³⁷. As a result, Dr. Sinclair is proposing that HQ itself, as the owner of resources and the counterparty to distributor resources supported by PPAs, should make the attestation³⁸.
120. In particular, Dr. Sinclair proposes:
- For each designated Distributor Resource (including resources used to deliver electricity to the Heritage Pool) Hydro Quebec shall attest that it owns the resource or has committed to purchase generation pursuant to a supply contract.³⁹
121. Finally, while the lack of attestation provides trouble enough in calculating ATC and operating the system, the HQT's proposed wording removes HQ from taking responsibility for what is designated, while maintaining the requirement for Network services customers to do so, thus creating two standards.

³³ Transcript, May 2, 2011, pp. 45-60, Dr. Robert Sinclair Examination by Mr. André Turmel.

³⁴ Transcript, May 2, 2011, pp. 60-63, Mr. Robert Sinclair Examination by Mr. André Turmel.

³⁵ HQT's pleading on Theme 12, paragraph 106.

³⁶ Exhibit C-13-44, Dr. Robert Sinclair Powerpoint presentation, pp.30-32, Transcripts, May 2, 2011, pp. 57-65, Examination of Dr. Robert Sinclair by Mr. André Turmel, Transcripts, May 4, 2011, pp. 181-182, Cross-Examination of Dr. Robert Sinclair by Mr. Éric Dunberry.

³⁷ Transcripts, May 4, 2011, pp. 180-182, Cross-Examination of Dr. Robert Sinclair by Mr. Éric Dunberry.

³⁸ Transcripts, May 4, 2011, pp. 180-184, Cross-Examination of Dr. Robert Sinclair by Mr. Éric Dunberry.

³⁹ Transcript, May 2, 2011, p.64, Dr. Robert Sinclair Examination by Mr. André Turmel.

122. This double standard is not consistent with the principle of non-discrimination and does not provide for vigorous enforcement of designation rules which are central to ensuring fair and appropriate allocation of transmission capacity.
123. [THIS PARAGRAPH HAS BEEN WITHDRAWN FOLLOWING THE DECISION RENDERED ON JULY 5, 2011 BY THE RÉGIE DE L'ÉNERGIE]
124. [THIS PARAGRAPH HAS BEEN WITHDRAWN FOLLOWING THE DECISION RENDERED ON JULY 5, 2011 BY THE RÉGIE DE L'ÉNERGIE]⁴⁰
125. [THIS PARAGRAPH HAS BEEN WITHDRAWN FOLLOWING THE DECISION RENDERED ON JULY 5, 2011 BY THE RÉGIE DE L'ÉNERGIE]⁴¹
126. As stated by HQT, it is the sole responsibility of the Distributor to make the “unilateral” positive act of designation. Therefore, HQT should satisfy itself of the attestation that the Distributor will give it regarding assurances that the contracts meet the requirement for designation.
127. As the market monitor and expert witness doctor Sinclair stated, the Distributor must have a legal claim to the instrument it designates. Therefore, if HQD does not “own” power plants but, rather only has purchase agreements as it has stated in the Supply Plan hearings, HQD could give the attestation; however, if HQD is not the owner of the plants but designates the plants we find ourselves in front of a difficulty that can only be resolved if HQ the legal entity attests.
128. [THIS PARAGRAPH HAS BEEN WITHDRAWN FOLLOWING THE DECISION RENDERED ON JULY 5, 2011 BY THE RÉGIE DE L'ÉNERGIE]
129. As was evidenced during the present hearing in exhibit HQT-8, document 5.1 (Plan des charges et des ressources pour la période 2009-2019), the distribution division of HQ, HQD, or HQ on behalf of HQD, is required to properly designate the facilities required by it to serve its native load.
130. Exhibit HQT-8, document 5.1, which was produced as evidence of this designation was actually not a list of designated resources but a list of facilities available to the distributor from which he could chose his resources.
131. This list, exhibit HQT-8, document 5.1, was forwarded to the transmission division without having the distribution division specifically identifying, or designating, the units on the list that would be used to serve native load.
132. As a result of not undertaking the action of specifying the resources which will be used to serve Native load, HQD is attempting to leave the impression that ALL units are designated, as a result of ‘grandfathering’, section 38.1.
133. The evidence brought for by HQT confirmed that ALL Hydro-Québec generating facilities are designated. However, doubts remain as if firm third party sales have been

⁴⁰ WITHDRAWN.

⁴¹ WITHDRAWN.

made from these designated facilities, such as for the firm export contract which HQ holds with Vermont.

iii) Off-System Resources

134. The concept of off-system resources is another distinguishing feature of the designation process prescribed by FERC.
135. The concept was removed by HQT in its previous OATT and should be reinserted into the 890 compliant version of the HQT OATT.
136. Section 29.2 of the FERC OATT titled “Application Procedures” requires transmission customers to indicate whether a designated resource is located on-system or off-system and requires the customer to attest to this fact.
137. When dealing with off-system resources Section 29.2 (V) of the FERC OATT contains the following:
138. For each off-system Network Resource, such description shall include:
- (1) Identification of the Network Resource as an off-system resource
 - (2) Amount of power to which the customer has rights
 - (3) Identification of the control area from which the power will originate
 - (4) Delivery point(s) to the Transmission Provider’s Transmission System
 - (5) Transmission arrangements on the external transmission system(s)
139. Section 31.6 of the pro forma 890 OATT, in combination with section 29.2 creates a requirement to update this information annually:

“31.6 Annual Load and Resource Information Updates:

The Network Customer shall provide the Transmission Provider with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Transmission Service under Part III of the Tariff including, but not limited to, any information provided under section 29.2(ix) pursuant to the Transmission Provider’s planning process in Attachment K. The Network Customer also shall provide the Transmission Provider with timely written notice of material changes in any other information provided in its Application relating to the Network Customer's Network Load, Network Resources, its transmission system or other aspects of its facilities or operations affecting the Transmission Provider's ability to provide reliable service.

140. Therefore, network transmission customers must make annual updates to the various information associated with the initial designation of network resources.
141. In contrast to the Order 890 OATT, the HQT OATT when dealing with the designation of distributor resources in section 37.1 does not include a section comparable to the Order 890 section 29.2 that sets out Application Procedures.
142. HQT does not make reference to the requirement to identifying a resource as being off-system when undertaking the designation process.
143. It is recommended that the requirement to make specific reference to off system resources⁴² be reintroduced to the HQT OATT, the rationale for this reversion back to the FERC standard is contained in Paragraph 839 of FERC ruling 890-A which states:

“[839] In order to ensure that transmission providers have sufficient information to determine the effect on ATC associated with the designation of an off-system network resource, the Commission in Order No. 890 modified section 29.2(v) of the pro forma OATT to specify exactly what information must be provided to designate an off-system network resource. As revised by Order No. 890, section 29.2(v) of the pro forma OATT requires the following information to be provided with the request and posted on OASIS when designating an off-system resource: (1) identification of the resource as an off system resource; (2) amount of power to which the customer has rights; (3) identification of the control area from which the power will originate; (4) delivery point(s) to the transmission providers’ transmission system; and (5) transmission arrangements on the external transmission system(s).”

144. The identification of a resource as either on system or off is required to properly administer restrictions associated with Native Load transmission service. In particular, Order 890 and previous FERC orders have clear prohibitions about allowing indirect use of network service to support a utility’s merchant function and off-system and on-system distinction have been critical in limiting the types of abuse that concerns FERC.
145. Consider Section 36.5 of the HQT OATT which speaks to the proper use of native load transmission service, when properly applied, incorporates the off-system or on-system location of the designated resource:

“36.5 Restrictions on Use of Service:

The Distributor shall not use Native-Load Transmission Service to (i) sell capacity and energy to non-designated loads, or (ii) directly or indirectly provide Transmission Service to third parties. The Distributor shall use Point-to-Point Transmission Service under Part II herein for any Third-Party Sale which requires use of the Transmission Provider's transmission System.”

⁴² Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp.31-32, Transcripts, May 2, 2011, p. 65, Examination of Dr. Robert Sinclair by Mr. André Turmel, Transcripts, May 4, 2011, pp. 54-59, Cross-Examination of Dr. Robert Sinclair by Mr. Éric Dunberry.

146. To help interpret the above quote, FERC has supplied an explanation of its concern associated with the practice of ‘directly or indirectly’ providing transmission service to third parties. Consider Paragraph 1593 of FERC's 890 final rule:

[1593] [...] In Idaho Power, the utility’s wholesale merchant function purchased power outside of Idaho Power's control area to facilitate an off-system sale and used secondary network service to bring the purchases into Idaho Power’s control area. In accepting the settlement, the Commission stated that “[i]t is axiomatic that the native load priority cannot be used to complete sales that are not necessary to serve native load.”

147. In the MidAmerican case (112 FERC ¶ 61,346) also cited in that same paragraph of Order 890 the following is noted in the audit report into Midamerican's activities:

“MidAmerican’s wholesale merchant function (Electric Trading) used network transmission service instead of point-to-point transmission service to deliver short-term energy purchases to a generator in its control area when it concurrently made short-term off-system sales.”

148. Hence, to properly monitor the use of Native load transmission service the OATT must recognize the difference between on-system and off-system resources.

149. To enable the determination of what resources are on-system vs off-system a definition of the transmission system free of ambiguity is required. This determination is made less clear because of HQT’s definition of ‘transmission system’, which differs from that of FERC.

150. The definition of ‘transmission system’ in the 890 OATT delineates the boundaries of the system through terms associated with ownership or control. The HQ definition speaks to voltage levels which makes the determination of what is ‘on-system’ and what is ‘off-system’ more difficult to assess.

151. Order 890 definition for transmission system is contained in definition 1.53, Transmission System, which states:

“The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff.”

152. HQT's definition for transmission system is found in definition 1.49 which states:

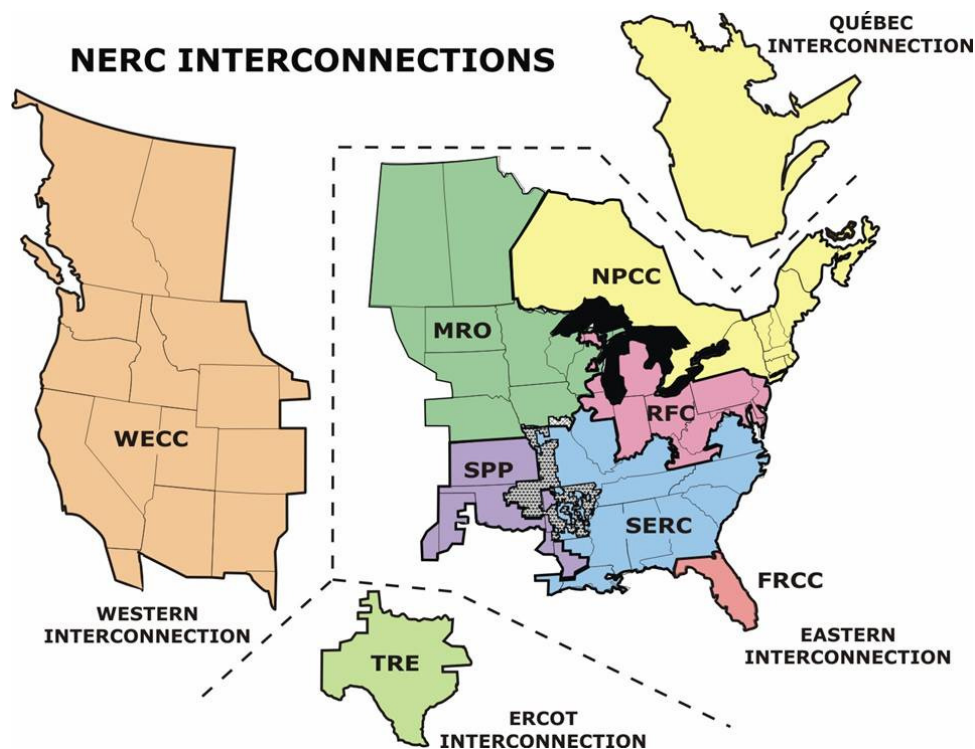
“A network of installations for the transmission of electric power, including step-up transformers located at production sites, transmission lines at voltages of 44 kV or higher, transmission and transformation substations and any other connecting installation between production sites and the distribution system.”

153. The HQT definition does not contain the same delineating features of ownership and geographical boundaries as found in the FERC definition.

154. To help identify the scope of the HQT system it is as well recommended that the definition for transmission system found in the HQT OATT be modified to conform to FERC's.
155. With respect to the scope of the Quebec system and the fact as to whether or not resources in Labrador, and by default CFLCo are considered off-system resources figure 1 of Exhibit HQT-20 document 2 (HQT-9, document 1) can be used.
156. That illustration indicates that Labrador is not within the NERC regional entity known as NPCC.



157. In addition expert witness Judah Rose in HQT-12, document 1, Page 9, provides a NERC map for the 4 Interconnections defined by FERC. As can be seen from this map below, Labrador is not within the Quebec Interconnect.



158. As a result of Labrador not being within the Quebec interconnect, or as a result of Labrador not being a part of the NPCC territory, generating resources in Labrador, including CFLCo, can NOT be considered as being either within the Quebec control area, nor can such resources be considered as being on the Quebec system, thus making them off-system resources⁴³.

iv) **Section 38.1 – Distributor Resources**

38.1 Designation of Distributor Resources: Distributor Resources shall include all generation purchased by the Distributor and designated to supply Native Load under the provisions herein. Distributor Resources cannot include resources, or any portion thereof, that are committed for sale to third-party load other than the Native Load or otherwise cannot be called upon to supply the Distributor's Native Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. Generating stations able to supply the Distributor's Native Load in date of January 1, 2001 shall be included in designated Distributor Resources until such time as written notice to the contrary is given by the Distributor to the Transmission Provider.

Liquidated Damages Provisions

⁴³ In recent Régie's decisions (D-2010-053 and D-2011-040) the Régie did not fully address the issue of Churchill Falls generating station being in HQT's Control Area as it only concluded that energy flows movement coming from Churchill Falls generating station into the Québec system are controlled, for the sole purposes of section 36.2 of HQT OATT, by HQT. Also, in the Régie de l'énergie's file R-3699-2009 (adoption of the Reliability standards), Régie reiterated in decision D-2011-068 [Onglet 3] the Reliability Coordinator's position regarding the fact that Reliability Standards applicable in Québec do not apply to CFLCo (see paragraph 34-35 of the Decision).

159. In Order 890, FERC clarified and affirmed conditions under which purchase power agreements may be designated as network resources⁴⁴.
160. In general, Order 890 affirmed that a PPA may be designated as a network resource only if the power sale is not committed to sale to a third party. While designated resources can be used to make third party sales, these third party sales must be interruptible so that the capacity can be recalled to supply network/native load.
161. Order 890 emphasized the nature of the penalties, or liquidated damages (LD), associated with an interruption. As Order 890 indicates:
- [1453] [T]he firmness of an obligation to provide under a contract with an LD provision is informed by the particular terms of the LD provision. The type of LD provision commonly seen in firm LD products such as the EEI Firm LD Product obligates the supplier, in the case of interruption for reasons other than force majeure, to make the aggrieved buyer financially whole by reimbursing them for the additional costs, if any, of replacement power.
162. The Order 890 goes on to state that LD provisions are the minimum required:
- “[1454] [...] Thus, as of the effective date of this Final Rule, power purchase agreements designated as network resources may only contain LD provisions that are of the “make whole” type. Conversely, power purchase agreements containing LD provisions that provide penalties of a fixed amount, that are capped at a fixed amount, or that otherwise do not require the seller to pay an aggrieved buyer the full cost of replacing interrupted power, are not acceptable.”
163. While otherwise properly designated as network resources would be “grandfathered” under the Order, the make-whole LD requirement would apply to existing agreements if the PPA is renewed or is undesignated on a non-temporary or “indefinite” basis.
164. NLH recommends that the Régie expressly endorse the requirements in Order 890 that specify the firmness conditions under which PPAs can be designated as network resources and apply these requirements to designated network resources and distributor designated resources under part IV of the HQT OATT⁴⁵.
165. In Pleadings, HQT counsel Mr. Dunberry exaggerates the impact of this recommendation⁴⁶.
166. The recommendation is much simpler than Mr. Dunberry suggests. NLH is only asking that the Régie adopt the considered judgement of FERC in Order 890 and require purchase agreements to have a very clear minimum condition in order to be designated.

⁴⁴ See paragraphs 1452 and following of Order 890.

⁴⁵ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp. 25-28, Transcript, May 2, 2011, p.66, Dr. Robert Sinclair Examination by Mr. André Turmel, Transcripts, May 4, 2011, pp. 133 à 169, Cross-Examination of Dr. Robert Sinclair by Mr. Éric Dunberry.

⁴⁶ HQT’s pleading on Theme 12, pp.20-21, Transcripts, June 29 2011, pp.219-225.

That the network or native load customer be made-whole in the event a supplier fails to perform its PPA obligations.

167. The Regie can judge for itself the difficulty of doing this, but we submit the idea is simple and well-considered. Moreover, while Mr. Dunberry suggest this idea had been rejected by the Regie in the NLH Complaint case, we note that in that case the Regie was interpreting the HQT tariff applicable in the complaint case which had not been amended to take account of Order 890 principles.
168. The Order 890 principle involving liquidated damages for network and native load resources PPA is an issue that is properly addressed in this 890 OATT hearing.

v) **Section 38.2 – Designation of New Distributor Resources**

38.2 Designation of New Distributor Resources: The Distributor may designate a new resource, giving the Transmission Provider written notice as much in advance as practicable and the Transmission Provider posts this new designation on its OASIS site. For a resource using a path posted on the Transmission Provider's OASIS site, the ~~TA~~ designation of a new Distributor resource must be made through that site by the Distributor. The new designation ~~e-Transmission Provider's OASIS by a request for modification of service. This request must include a statement that the new Distributor Resource satisfies the following conditions: (1) the Distributor owns the resource, has committed to purchase generation for the amounts approved by the Régie, or pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part IV of the Tariff; and (2) The Distributor Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Distributor's Native Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. The new designation Distributor's request will be deemed deficient if it does not include this statement and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.~~

A Connection Agreement entered into by the Transmission Provider and the owner of a new designated resource or a new generating station able to supply a resource designated by the Distributor is required before the Transmission Provider may proceed with the Network Upgrades required to integrate such new resource.

169. NLH refers the Regie to comments regarding attestation paragraphs 100 to 129.

vi) **Section 38.3 – Termination of Distributor Resources**

38.3 Termination of Distributor Resources: The Distributor may terminate at any time the designation of all or part of a resource ~~but shall so notify by providing notification to but shall so notify~~ the Transmission Provider ~~in writing through OASIS in writing~~ as soon as reasonably practicable. For a resource using a path posted on the Transmission Provider's OASIS site, the Distributor shall do it through that site, ~~but not later than the firm scheduling deadline for the period of termination. For a resource not using a path posted on OASIS, the information below shall be posted on OASIS by the Transmission Provider. Any request for Termination of Distributor Resource status must be submitted on OASIS, and should indicate whether termination the request is for indefinite or temporary termination. An request for indefinite termination of Distributor Resource status must indicate the date and time that the termination is to be effective, and the identification and capacity of the resource(s) or portions thereof to be indefinitely terminated. A request for temporary termination of Distributor Resource status must include the following:~~

(i) Effective date and time of temporary termination;

(ii) Effective date and time of redesignation, following period of temporary termination;

(iii) Identification and capacity of resource(s) or portions thereof to be temporarily terminated;

(iv) Resource description and attestation for redesignating the Distributor Resource following the temporary termination, in accordance with Section 38.2; and

(v) Identification of any related transmission service requests or designations of resources to be evaluated concomitantly with the request for temporary termination, so that such service requests or designations of resources may be examined ~~for undesignation and the request for these related transmission service requests must be approved or denied as a single request.~~ The evaluation of these related transmission service requests or designations of resources must take into account the termination of the Distributor Resources identified in (iii) above, as well as all competing transmission service requests of higher priority. Should the related transmission service requests or designations of resources be rejected, the Distributor shall be deemed not to have terminated the resources.

~~As part of a temporary termination, the Distributor may only redesignate the same resource that was originally designated, or a portion thereof. The designation of Requests to redesignate a different resource and/or a resource with increased capacity will be deemed deficient and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.~~

170. In the recent case R-3757-2011 authorizing the connection of a new power plant by a third party; one needs to ask how, given the new rules on termination of designation, will the path Romaine-HQT be posted on OASIS since there is a commercial value and how ATC will be calculated on this path⁴⁷.
171. In effect, this path will include flows from Labrador (CFLCo) towards the HQT Point. Thus this path has commercial value for more than one market participant considering the present use made of that path by NLH and additional requests made on that path by NLH.
172. Also, how will designation and termination of designation be handle on that path for the portion of the flows which are designated?

vii) Section 38.5 – Operation of Distributor Resources

38.5 Operation of Distributor Resources: The Distributor shall not operate its designated resources located in the Transmission Provider's Control Area such that the output of those facilities exceeds its designated Native Load plus losses, ~~plus power sales under a reserved sharing program, plus sales that permit curtailment without penalty to serve its designated Native Load,~~ unless the Distributor has to this effect entered into a Service Agreement with the Transmission Provider for Point-to-Point Transmission Service under Part II herein. ~~For all Distributor Resources not physically connected with the Transmission Provider's Transmission System, the Distributor may not schedule delivery of energy in excess of the Distributor Resource's capacity, unless the Distributor supports such delivery within the Transmission Provider's Transmission System by either obtaining Point-to-Point Transmission Service or utilizing secondary service pursuant to Section 36.3. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that the Distributor's schedule at the delivery point for a Distributor Resource not physically interconnected with the Transmission Provider's Transmission System exceeds the Distributor Resource's designated capacity, excluding energy delivered using secondary service or Point-to-Point Transmission Service, the dispositions of section 13.7 d) will apply.~~

173. Section 30.4 of the FERC 890 OATT contains a test for assessing the scheduled generation from designated resources to ensure that energy generated from designated resources can be properly reconciled to designated and non designated uses:

“30.4 Operation of Network Resources: The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area *such that the output of those facilities exceeds its designated Network Load, plus Non-Firm Sales delivered pursuant to Part II of the Tariff, plus losses, plus power sales under a reserve sharing program, plus sales that permit curtailment without penalty to serve its designated Network Load.* This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System. For all Network Resources not physically connected with the Transmission Provider's Transmission System, the Network Customer may not schedule delivery of energy in excess of the Network Resource's capacity, as specified in the Network Customer's Application pursuant to Section 29, unless the Network Customer supports such delivery within the Transmission Provider's Transmission System by either obtaining Point-to-Point Transmission Service or utilizing secondary service pursuant to Section 28.4. The Transmission Provider shall specify the rate treatment and all related terms and conditions

⁴⁷ Régie de l'énergie's decision D-2011-083 rendered on June 30, 2011 in file R-3757-2011. [Onglet 4]

applicable in the event that a Network Customer's schedule at the delivery point for a Network Resource not physically interconnected with the Transmission Provider's Transmission System exceeds the Network Resource's designated capacity, excluding energy delivered using secondary service or Point-to-Point Transmission Service."

174. As noted in paragraph 102 of the present pleading HQT has adopted the FERC 890 wording in HQT OATT part III section 30.4.

"30.4 Operation of Network Resources: The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus Non-Firm Sales delivered pursuant to Part II of the Tariff, plus losses, plus power sales under a reserved sharing program, plus sales that permit curtailment without penalty to serve its designated Network Load."

175. However, HQT has adopted different text in its proposed OATT part IV section 38.5 such that it permits generation from designated resources to exceed their designated rating provided they have proper transmission reservations, As a result of these edits, the transparency, applicability, and ability of the test to discern whether designated facility output is being used for designated or non designated purposes has been diminished. HQT OATT section 38.5:

"38.5 Operation of Distributor Resources: The Distributor shall not operate its designated resources located in the Transmission Provider's Control Area such that the output of those facilities exceeds its designated Native Load plus losses, plus power sales under a reserved sharing program, plus sales that permit curtailment without penalty to serve its designated Native Load, unless the Distributor has to this effect entered into a Service Agreement with the Transmission Provider for Point-to-Point Transmission Service under Part II herein."

176. The textual changes made to the 890 OATT produces a test in the HQT OATT that conditions designated resource output on the resource having adequate transmission reservations, while simultaneously removing the unconditional test on generation output.

177. FERC's intentions with this section are articulated in p 234 of Order 890-B:

[234] [...] Section 30.4 of the pro forma OATT, as amended in this order, restricts the operation of a network customer's designated network resources such that the output of those facilities does not exceed the sum of the network customer's designated load, non-firm sales, losses, and sales under a reserve sharing agreement. This prohibits the transmission provider or a network customer from using a designated resource for third-party sales that do not fall within one of the specified categories. At times, the Commission has generally referred to this prohibition as a limitation on firm third-party sales from designated network resources. To be more specific, network customers may not operate designated network resources except for those purposes specified in section 30.4.

178. In comparing the 890 OATT and the HQT OATT both are consistent in their monitoring, hourly measurement, and the summation of demand for 1) designated loads (as identified in 37.1) 2) System Losses 3) transactions related to reserve sharing 4) sales that permit curtailment without penalty to serve its designated Native (Network) Load.
179. However the tariffs differ in the fifth element of the test FERC also includes the quantity of generation used for non firm sales “– 5) plus Non-Firm Sales delivered pursuant to Part II of the Tariff.”
180. Thereby in each hour quantifying each of the permitted uses for each designated resource and then totaling those measured or scheduled values so that each total can be compared to the MW designation of each unit to ensure that production from each resource is not being used for unintended purposes, such as firm third party sales
181. In the HQ OATT the 5th permitted use for energy from a designated resource, i.e. non-firm sales facilitated through Point to Point deliveries (measurable through an appropriate schedule for non firm energy) has been removed from the test In its place HQ have provided the following text:
- 5) unless the Distributor has to this effect entered into a Service Agreement with the Transmission Provider for Point-to-Point Transmission Service under Part II herein.
182. The inclusion of this text by HQ thereby produces a test which compares 4 of the designated facilities permitted uses, which are all hourly production quantities, to a transmission reservation quantity, which is not a production quantity. As a result compares a total hourly generation quantity to a daily, weekly monthly, or yearly transmission system reservation quantity
183. In essence the inclusion of these words allows for the use of a designated resource for both firm sales and non-firm sales (i.e. sales that permit curtailment without penalty to serve native load), as long as a point to point transmission service agreement is in place; however this is contrary to FERC’s intentions that designated resources not be used for firm sales to undesignated load.
184. In order to satisfy to FERC’s intent, plant production quantities should be compared to the plants designated value; 2) The transmission reservation quantity, which does not contain a generator's hourly production quantity as would be found in a transmission reservation, contains a transmission capacity reservation value that is not necessarily related to a particular facility and which need not vary hour by hour, thus removing the hourly significance and facility specific nature of the test 3) The transmission reservation booking against which a portion of the designated facilities permitted uses are being compared, can be used to facilitate both firm and non-firm energy sales and as a result may be used to transmit firm energy sales which are not permitted from designated resources.
185. As a result of this proposed departure from the 890 OATT, the FERC test for restricting the use of output of designated resources has been supplanted by a test for the existence of a transmission reservation.

186. Proper application of the FERC test is complemented by at least two other portions of the OATT. Those being the definition of non-firm sales and the other being the class of transmission service purchased, as per section 13.7.
187. As noted previously, unlike the FERC OATT, the HQT OATT does not contain a definition for non-firm sales as does the FERC OATT. As a result, FERC interpretation and precedence related to non firm sales, as mentioned in another section of this pleading, are less transferable given that HQ has removed references to non-firm sales in this section.
188. As a result NLH proposes that HQT adopts FERC 890 language for section 38.5 as well as 30.4.

F. PART V OF HQT OATT – COMING INTO FORCE

i) Section 44.2 – Coming into Force of Rates

44.2 Coming into Force of Rates: The text of the *Hydro-Québec Open Access Transmission Tariff* herein shall come into force on ~~XX XXXX~~ 2009, with the exception of Schedules 1 through 7, 9 and 10 and Attachment H and Sections 15.7 and 28.5 which shall come into force on January 1st, 2009 and Attachment C-1, which shall come into force at the date of the Transmission Provider's new OASIS system, which shall supersede Attachment C.

189. As far as the coming into force of the new text including its schedules and attachments, we understand that no retroactivity will be requested; that this coming into force will be done exclusively on a going forward basis.

G. SCHEDULE OF HQT OATT

i) Schedule 4 – Energy Generator Imbalance Service – Receipt

SCHEDULE 4 - Energy Generator Imbalance Service – Receipt

Generator Imbalance Service is provided when the output of a generating unit synchronized to the Transmission Provider's system does not match the output that unit is scheduled to supply to (1) another Control Area or (2) a load in the Transmission Provider's Control Area in a given hour. The Transmission Provider is required to offer Generator Imbalance Service insofar as it is able to do so using its resources or those made available to it if the Transmission Service is used to deliver energy from a generating unit synchronized to its Transmission System. The Transmission Customer must either purchase this service from the Transmission Provider or make comparable alternative arrangements, which may include using non-generation resources able to ensure this service, in order to fulfill its obligation to provide Generator Imbalance Service. The Transmission Provider may impose a penalty on the Transmission Customer for generator imbalances under this Schedule or for energy imbalances under Schedule 5 if either occurs during the same hour, but not for both, except if imbalances have a combined aggravating rather than offsetting effect. Generator Imbalance Service is charged based on the following deviation bandwidths: (i) charge for $\pm 1.5\%$ deviation (minimum of 2 MW) from the scheduled transaction (Band 1), applicable on an hourly basis to any generator imbalance arising from one or more of the Transmission Customer's scheduled transactions, payable at the end of each month and equalling 100% of the incremental/decremental price, (ii) charge for the portion deviating from the scheduled transaction by over $\pm 1.5\%$ to $\pm 7.5\%$ (or over 2 to 10 MW) (Band 2), applicable on an hourly basis to any generator imbalance arising from one or more of the Transmission Customer's scheduled transactions, payable at the end of each month and equalling 110% of the incremental price or 90% of the decremental price, and (iii) charge for the portion deviating from the scheduled transaction by more than $\pm 7.5\%$ (or over 10 MW) (Band 3), applicable on an hourly basis to any generator imbalance arising from one or more of the Transmission Customer's scheduled transactions and equalling 125% of the incremental price or 75% of the decremental price, except that intermittent resources shall be exempt from Band 3 charges and shall pay Band 2 charges on all deviations exceeding Band 1. For the purposes of this Schedule, an "intermittent resource" is an electricity generating unit with non-dispatchable output, driven by a non-storable source of energy and which thus cannot respond either to variations in system load or to security-related transmission constraints. Notwithstanding the foregoing, deviations from scheduled transactions arising from instructions issued by the Transmission Provider shall not be subject to the charges above; the resulting amounts instead being settled at the end of the month by apayment equal to 100% of the incremental/decremental Band 1 price. Such instructions may be related to correcting a drop in frequency, responding to a reserve sharing event or shifting generation to relieve congestion. For the purposes of this Schedule, incremental/decremental prices are established as follows, converted into Canadian dollars at the Bank of Canada noon exchange rate : (1) Band 1 incremental price: This price equals the highest hourly price for each hour on the following three (3) markets: (1)

New York: the NYISO Real-time price (Zone M) less US\$0.16/MWh, less the applicable rate for the Transmission Provider point to point hourly transmission service, including applicable rates for ancillary services necessary to sell energy at the NYISO's Zone M ("NY Incremental Price"); (2) New England: the ISO-NE Real-time price for Phase II (Sandy Pond) less US\$6.00/MWh, less the applicable rate for the Transmission Provider point to point hourly transmission service, including applicable rates for ancillary services necessary to sell energy at Sandy Pond ("NE Incremental Price"); and (3) Ontario: the IESO hourly market price (HOEP) less the applicable rate for the Transmission Provider point to point hourly transmission service, including applicable rates for ancillary services necessary to sell energy in Ontario ("ONT Incremental Price"). (2) Band 1 decremental price: This price equals the lowest hourly price for each hour among the following three (3) markets: (1) New York: the NYISO Real-time price (Zone M) plus US\$4.50/MWh("NY Decremental Price"); (2) New England: the ISO-NE Real-time price for Phase II (Sandy Pond) plus US\$8.00/MWh ("NE Decremental Price"); and (3) the IESO hourly market price (HOEP) plus CA\$5.00/MWh during on-peak hours and CA\$4.00/MWh during off-peak hours (as defined by NERC) ("ONT Decremental Price"). (3) Incremental Band 2 and Band 3 price: This price equals the highest hourly price for each hour among (1) the NY Incremental price, (2) the NE Incremental Price, (3) the ONT Incremental Price and (4) CA\$100.00/MWh. (4) Band 2 decremental price: This price equals the lowest hourly price for each hour among (1) the NY Decremental Price, (2) NE Decremental Price, (3) ONT Decremental Price and (4) CA\$25.00/MWh. (5) Band 3 decremental price: This price is \$0.00/MWh. In all instances, the incremental price applies to the sum paid by the customer when the amount of electricity the Transmission Provider receives falls short of the scheduled amount and the decremental price applies to the sum paid by the Transmission Provider when the amount of electricity received from the customer exceeds the scheduled amount Energy Imbalance Service – Receipt is provided when a difference occurs over a single hour between the scheduled amount of energy and actual amount received at the Point of Receipt by the Transmission Provider. The Transmission Provider must offer this service for all energy received from sources located in the Transmission Provider's Control Area. The Transmission Customer shall either purchase this service from the Transmission Provider or make comparable alternative arrangements for obtaining this service from facilities located within the Transmission Provider's Control Area. The Transmission Provider shall establish a deviation band of ± 1.5 percent ($\pm 1.5\%$) of the scheduled transaction, with a minimum of 2 MW, to be applied hourly to any energy imbalance that occurs as a result of one or more transactions scheduled by the Transmission Customer. Parties shall attempt to eliminate energy imbalances within the limits of the deviation band within thirty (30) days. If an energy imbalance is not corrected within thirty (30) days, compensation will be set in accordance with the prices given below. Furthermore, the amount of energy that exceeds the deviation band shall also be subject to the rates below. (1) Amount of energy received by the Transmission Provider exceeds the scheduled amount: The Transmission Provider pays the Transmission Customer 3.75¢/kWh. (2) Amount of energy received falls short of the scheduled The Transmission Customer pays the Transmission Provider 11.25¢/kWh. For the purpose of Schedule 4, all negative market price is deemed to be \$0.00/MWh.

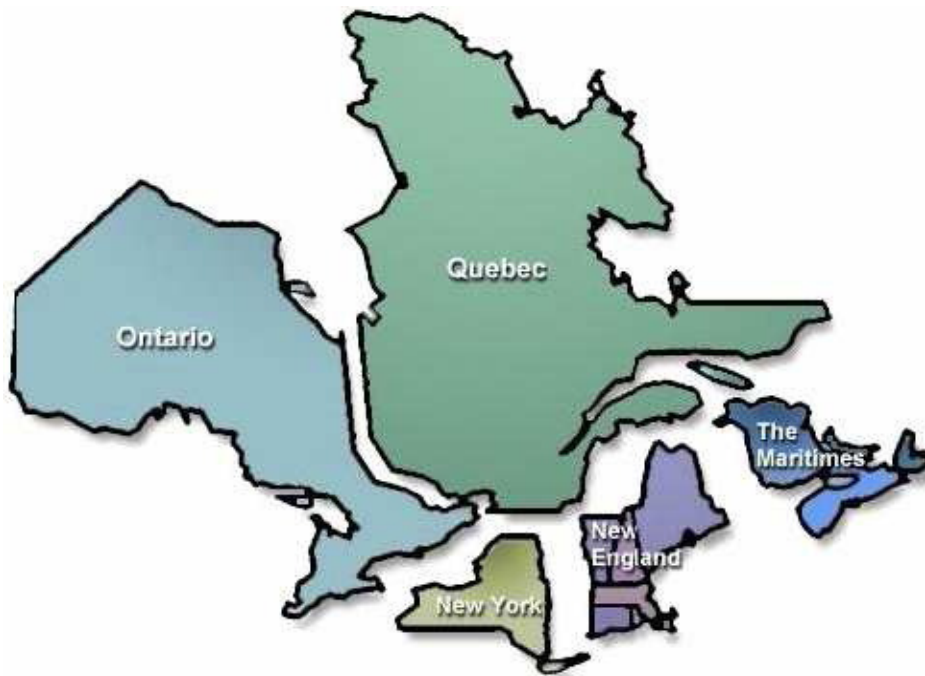
190. Certain modifications proposed by HQT to HQT OATT Section 3 “Ancillary Services”, and to Schedule 4 “Generator Imbalance Services” are not consistent with the FERC Order 890 OATT and are technically inconsistent with the concept, defining structure, and operation of a control area and as a result should not be approved by the Régie.
191. The wording changes proposed by HQT that are a departure from the FERC 890 OATT change the criteria applied to a generator in determining whether generator imbalance charges are applicable.
192. In decision D-2009-015, the Régie has taken the position that this question has so far not been sufficiently developed to allow the Régie to approve the modifications proposed by HQT:
- “La Régie comprend que la proposition du Transporteur a pour effet d’appliquer le service de compensation d’écart de réception aux centrales qui sont dans sa zone de contrôle et aux centrales, hors de sa zone de contrôle, qui sont synchronisées à son réseau. La Régie considère que ce sujet n’a pas été traité de façon assez approfondie pour lui permettre d’accepter, au présent dossier, les modifications proposées par le Transporteur.”⁴⁸
193. Not only is the use of the word “synchronous” inconsistent with FERC, it is also a change from HQT’s current OATT which applies imbalance charges to generators located within the transmission provider’s control area not generators synchronized with the HQT system. There is no reasonable justification for the change.

⁴⁸ Régie de l’énergie’s decision D-2009-015 rendered in file R-3669-2008 Phase I, p.107.

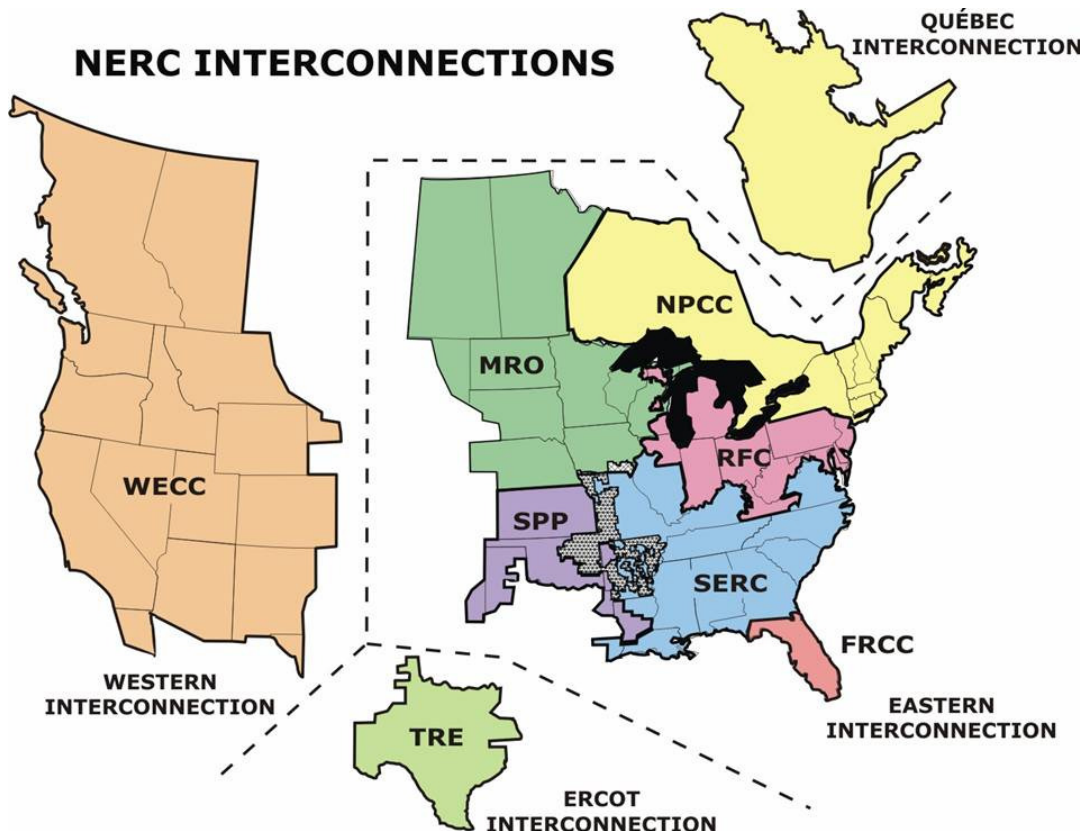
194. Specifically, FERC order 890 applies imbalance charges when transmission service is used to deliver energy from a generator “located within its Control Area” (refer to FERC 890 OATT reference section 3 and in Schedule 9). Under the proposed HQT OATT imbalance charges are to be applied when transmission service is used to deliver energy from a generator “synchronized to its transmission system” (reference HQT OATT reference section 3 and in Schedule 4)⁴⁹.
195. Changing the criteria from “within a control area” to “synchronized to a transmission system” violates the function of a Control Area as per its definition.
196. As per the HQT OATT:
- “1.64 Control Area:** An electric power system or combination of electric power systems to which a common automatic generation control (AGC) scheme is applied in order to:
- (1) match, at all times, the power output of generating units within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);
- (2) maintain scheduled interchanges with other Control Areas, within the limits of Good Utility Practice;”
197. A Control Area is a collection of generation, transmission, and loads within the metered geographic boundaries. These metered boundaries define the area that makes up the Control Area.
198. HQT, in its June 30th pleadings, has indicated that CFLCo will be subject to the imbalance charges⁵⁰.
199. In the case of energy delivered from Labrador the metered boundary, is located at the LAB-HQT border, thus placing Labrador and its entire electrical system outside of the HQT Control Area. This fact is illustrated in figure 1 of Exhibit HQT-20 document 2 (HQT-9, document 1) as shown below.
200. That Illustration indicates that Labrador is not within the NERC regional entity known as NPCC.

⁴⁹ Exhibit C-13-47, Dr. Robert Sinclair PowerPoint presentation, pp.84-85, Transcripts, May 2, 2011, pp.95-96, Dr. Robert Sinclair Examination by Mr. André Turmel.

⁵⁰ HQT’s pleading on Theme 4, p.5, paragraph 19.



201. In addition expert witness Judah Rose in HQT-12, document 1, Page 9, provides a NERC map for the 4 Interconnections defined by FERC. As can be seen from this map below, Labrador is not within the Quebec Interconnect.



202. As a result of Labrador not being Within the Quebec interconnect, CFLCo can NOT be considered as being either within the Quebec control area, nor can it be considered as being an On system resource as per the OATT.
203. Operationally, generators within the boundaries of the Control Area are adjusted through AGC to maintain the supply - demand balance within the metered area as imports, exports and loads change.
204. In the case of Labrador, generators are not connected to the HQT AGC system and therefore do not meet the definition of being in the HQ control area as defined by FERC and the HQT OATTs. In addition NLH has not entered into any formal agreement to be within the HQ control area, and CFLCo has not entered into any arrangement or agreement to be part of the HQT Control Area.
205. FERC clarified the application of generator imbalance services in the following ruling – From 890-A:
- “[287] The Commission affirms the decision in Order No. 890 to adopt standardized generator imbalance provisions in Schedule 9 of the pro forma OATT. We agree with Sempra Global that section 3 of the pro forma OATT, as revised in Order No. 890, does not properly reflect that generator imbalance service must be offered for any transmission service used to deliver energy from a *generator located within the transmission provider’s control area, as required in Schedule 9*. We revise section 3 to make this clear.”
206. That section makes specific, and proper, reference to the fact that generators have to be within the control area. It does not make reference to generators synchronized to the CA. It's not that FERC is silent on external generators; by design generators outside the metered boundaries of the control area do not balance supply and demand in another control area.
207. While these outside sources of supply are capable of delivering energy into the system they are not connected to the AGC scheme of that control area and therefore not in the control area.
208. These transactions are scheduled between systems and any over-or-under supplies associated with these schedules are properly accounted for in agreements relating to inadvertent flows⁵¹. By way of a practical example, generators in the ISO NE Control Area that wheel power into and through NY ISO are synchronous with the NYISO system however they are not charged generator imbalance penalties by NYISO.
209. Lastly, the Regie, neither in decisions D-2010-053 and D-2011-040, nor in the file R-3699-2009 (adoption of the Reliability Standards), definitively concluded that the CFLCo plant or any plant located in Labrador, as being “On System” under the OATT

⁵¹ Transcript, May 2, 2011, pp. 95-96, Dr. Robert Sinclair Examination by Mr. André Turmel.

meaning of the word⁵². We only find HQT in its role of network controller that “considers” the CFLCo plant to be on system.

210. In fact within the reliability case heard by the Régie, it was said repeatedly that the reliability requirements would not apply to the CFLCo plant. In effect, not being “on system” these requirements cannot apply to the CFLCo plant. It is the same logic for the imbalance charges; the CFLCo plant not being “on system” the charges cannot apply.
211. Deviations between systems are managed as “inadvertent” exchanges; not “imbalance”. Hence the deviation in energy flow that enters the HQ system from the Labrador system should be referred to by that term and not referred to as generator imbalances.
212. In summary, the proposed wording contained in HQT OATT Section 3 and Schedule 4 that applies generator imbalance charges to generators synchronized with the HQT system instead of those in the Quebec control system, is inconsistent with FERC order 890 and contrary to industry practice.
213. As a result NLH proposes that HQT not change the criteria for application of imbalance charges to generators and instead maintains the FERC 890 OATT wording “generator in the control area” not change to “generators synchronized to the Transmission Provider’s system”.
214. In addition, NLH wishes to provide comments to the Regie on testimony introduced during the hearings by BEMI on the proposed formulas and methodology used to determine the incremental and decremental prices for imbalance.
215. NLH agrees with criticisms of the HQT proposed methodology as identified by EBM expert Mr. William K. Marshall regarding lack of consistency with FERC principles for calculating incremental proxy costs for imbalance service⁵³.
216. Specifically:
 - (1) HQT’s proposal does not use one formula to calculate proxy incremental cost for both incremental and decremental settlements.
 - (2) HQT’s proposal has different costs for different bands and the magnitude of the difference in band prices is unduly discriminatory.

⁵² In recent Régie’s decisions (D-2010-053 and D-2011-040) the Régie did not fully address the issue of Churchill Falls generating station being in HQT’s Control Area as it only concluded that energy flows movement coming from Churchill Falls generating station into the Québec system are controlled, for the sole purposes of section 36.2 of HQT OATT, by HQT. Also, in the Régie de l’énergie’s file R-3699-2009 (adoption of the Reliability standards), Régie reiterated in decision D-2011-068 the Reliability Coordinator’s position regarding the fact that Reliability Standards applicable in Quebec do not apply to CFLCo (see paragraph 34-35 of the Decision).

⁵³ Exhibit C-6-52, Revised Evidence of William K Marshall on Imbalance Pricing and Related Issues Relative to FERC Order 890, pp. 3-6.

- (3) The fixed floor prices and fixed price caps are not linked to actual costs incurred and are excessive penalty charges which are unduly discriminatory, particularly given HQT is not subject to these charges and they are only applicable to HQT in limited circumstances.
217. Finally, during the course of the present hearing the practical application of how to assign imbalance charges to different customers using the same path were raised and this matter remains unresolved⁵⁴.
218. Based on the criticisms articulated during the hearing regarding HQT's proposed methodology for proxy valuation of incremental costs for imbalance service, NLH recommends that the Regie should not approve HQT's proposed changes to Schedule 4. A separate process should be established involving engagement of affected transmission customers to address the serious weaknesses identified and reach agreement on a less discriminatory methodology to be brought forward for the Regie's approval that is consistent with FERC's principles.

H. ATTACHMENT OF HQT OATT

i) Attachment C-1 – Methodology of Estimating Available Transfer Capability

ATTACHMENT C-1
Methodology for Estimating Available Transfer Capability

This Attachment C-1 replaces Attachment C as of the date set forth in Section 44.2 of this Tariff to this effect. The Transmission Provider offers Point-to-Point Transmission Service over its interconnections with neighboring systems. Data on the transfer capability of interconnections for given periods in the future is posted on the Transmission Provider's OASIS site. Each interconnection is indicated as a path linked to point HQT, which represents all Points of Receipt on the Transmission Provider's system, except the interconnections themselves. The following guidelines and principles are applied to assess Available Transfer Capability (ATC): (a) Good Utility Practice; (b) Northeast Power Coordinating Council (NPCC), North American Electric Reliability Corporation (NERC) and North American Energy Standards Board (NAESB) criteria and guidelines; and (c) Applicable Transmission Provider criteria and guidelines. Available Transfer Capability is the portion of Total Transfer Capability (TTC) that is unused after consideration of Transmission Reliability Margin (TRM) and requirements to: (a) meet obligations of existing Transmission Service for the delivery of resources to Native-Load Customers; (b) meet obligations of existing contracts under which Transmission Service is provided; and (c) meet obligations of accepted Applications for Transmission Service. For interconnections where firm transfer capability is coordinated between the Transmission Provider's system and a neighbouring system, such capability corresponds to the lower of the following capacity values: (1) firm capacity to receive (or deliver) power before the ETCs of the neighbouring system are taken into account, and (2) firm capacity to receive (or deliver) power before the ETCs of the Transmission Provider are taken into account. Non-firm transfer capability offered by the Transmission Provider is the maximum value available over a given horizon. Firm transfer capability offered by the Transmission Provider for annual and monthly horizons includes a provision of 5% of the duration to account for planned equipment maintenance and other foreseen events that may occasionally reduce the firm transfer capability offered. Firm transfer capability offered by the Transmission Provider for weekly and daily horizons is to be available for each hour of the applicable horizon. Non-firm transfer capability offered by the Transmission Provider is the maximum value available over a given horizon.

1. Basic equations for calculating transfer capability

Scheduling horizon
 $ATC_{firm} = TTC - ETC_{firm} - CBM - TRM_{firm} + PBR$ $ATC_{non-firm} = TTC - ETC_{firm} - ETC_{non-firm} - CBM - TRM_{non-firm} + CF + PBR$
 $ETC_{firm} = QCRD + QCRND_{firm} + NITS_{firm} + PTP_{firm} + ROR + GF_{firm} + OS_{firm}$
 $ETC_{non-firm} = QCRND_{non-firm} + NITS_{non-firm} + PTP_{non-firm} + GF_{non-firm} + OS_{non-firm}$

Real-time horizon
 $ATC_{firm} = TTC - ETC_{firm} - CBM - TRM_{firm} + PBR$
 $ATC_{non-firm} = TTC - ETC_{firm} - ETC_{non-firm} - CBM - TRM_{non-firm} + CF + PBNS + PBR$
 $ETC_{firm} = QCRD + QCRND_{firm} + NITS_{firm} + PTP_{firm} + GF_{firm} + OS_{firm}$
 $ETC_{non-firm} = QCRND_{non-firm} + NITS_{non-firm} + PTP_{non-firm} + GF_{non-firm} + OS_{non-firm}$

Where:

⁵⁴ Transcripts, February 8, 2011, pp.85 and following, Mr. Sylvain Clermont Cross-Examination by Mr. André Turmel.

ATC: Available Transfer Capability
TTC: Total Transfer Capability as defined in Section 3a
ETC: Existing Transmission Commitments as defined in Section 3b
CBM: Capacity Benefit Margin as defined in Section 3e TRM: Transmission Reliability Margin as defined in Section 3d
CF: Counterflows, scheduled flows over the related reverse path(s)
PBNS: Postbacks – Non-Scheduled, portion of the non-scheduled ETC offered again as nonfirm capacity
PBR: Postbacks – Redirects, portion of PTPfirm moved by the customer to another path and offered again on the original path
QCRD: "Québec Ressource Désignée" [designated resource for Québec], capacity of a resource posted on OASIS and designated reserved by the Distributor as a designated resource for supplying Québec Native Load QCRNdfirm: "Québec Ressource Non Désignée" [nondesignated resource for Québec], capacity of a resource posted on OASIS but not designated reserved by the Distributor as a non-designated resource for supplying Québec Native Load QCRNDnon-firm: "Québec Ressource Non Désignée" [nondesignated resource for Québec], capacity of a resource posted on OASIS reserved by the Generator as a non-designated resource for supplying Québec Native Load and not designated by the Distributor NITS: Network Integration Transmission Service, capacity reserved for that service PTP: Point-to-Point, capacity reserved for confirmed Point-to-Point Transmission Services ROR: Roll-Over Rights, capacity reserved for renewal rights associated with Long-Term Firm Transmission Services
GF: Grandfathered, capacity reserved under acquired rights OS: Other Services, capacity reserved under other types of Transmission Service

2. Steps in calculating transfer capability

3. Transfer capability components

a. Total transfer capability (TTC):

i) TTC is the amount of power that can be transmitted over an interconnection while ensuring that power system stability is maintained following a contingency and that voltage and thermal capacity limits comply with the Transmission Provider's rules and practices, and with NPCC and NERC guidelines. TTCs are estimated at the boundary of the Transmission Provider facilities. Projected TTC values for a path are always less than or equal to that path's reference total transfer capability (TTCref: the maximum TTC value demonstrated to be safely achievable).

ii) To estimate TTC, the Transmission Provider uses offline computer simulations to determine the operating limits of its Transmission System under a specific set of operating conditions. An operating limit is then established for each operating condition taken into account. Assumed operating conditions during the period under study are then compared to the limits thus determined. TTC values for a specific period are calculated based on projected system operating conditions for that period. TTCref values are coordinated with the neighboring system when facilities are designed and are reassessed annually during operation.

The transfer capability of a neighboring system has an impact on the amount of power that can be transferred over interconnections. Except for interconnection facilities jointly owned by the Transmission provider and neighboring system's transmission provider, parameters outside the Transmission Provider control (facility outages, system operating conditions and limits) that affect the transfer capability of neighboring systems may be factored into the Transmission Provider TTC calculations.

iii) The Transmission Provider uses the following data to calculate TTC values:

- Forecast regional loads;
- Forecast ambient air temperatures;
- Scheduled generation from resources designated for supplying Native Load; and
- Approved outage schedules.

Forecasts of hourly Québec power needs are established for the coming ten days based on a combination of models that factor in hourly weather data. Such forecasts are updated every five minutes based on the latest discrepancies observed. They are also refreshed every 20 minutes based on any new pertinent information. The subsystem load is forecast using a linear model relating the hourly power of each subsystem to forecast hourly Québec power needs. The forecast regional subsystem load is refreshed every 20 minutes, just after forecast hourly Québec power needs are calculated. Beyond ten days, a longer-term forecast revised two to four times a year is used. That forecast establishes hourly Québec needs and weekly demand peaks corresponding to the Distributor's monthly forecasts for the present year and for the coming year. When outages of certain transmission facilities in the interconnection system occur, the amount of local generation available affects TTC values. Assumptions based on mean runoff are then used since run-of-the-river hydropower is involved. Only actual outages and transmission facility outages, planned for the long term or approved for the short term, are factored into the TTC calculation.

iv) The following factors affect the Transmission Provider transfer capabilities. Transfer capability of interconnection systems: Interconnection systems are regional transmission systems operated at 120, 230 or 315 kV. These systems feed interconnections and sometimes also load-serving substations. The transfer capability of such systems can be limited by the thermal constraints of component equipment (transformers, transmission lines). Capability may also be limited by minimum-voltage constraints of component load-serving substations or by stability constraints of component generating stations. Electrical ratings for interconnection equipment: The Transmission Provider equipment is designed to be used in compliance with precise mechanical and electrical ratings. In particular, the thermal capacity of interconnection equipment varies with ambient air temperature. For most interconnection equipment, increased temperature results in decreased capacity. Equipment outages for facility maintenance: Equipment in the Transmission Provider's system must occasionally be taken out of service to ensure the maintenance of facilities. Such outages result in reduced transfer capability over interconnections. Loads connected to interconnection systems: Some interconnection systems supply load-serving substations. The effect of such internal loads is factored into the TTC calculation for deliveries to the neighboring system. For some interconnections, energy is transferred by switching a load block from a neighboring system to the Transmission Provider's system. The transfer capability then considers the maximum load, annual or seasonal, of the substations switched. Generation connected to interconnection systems: Some interconnections are supplied in part by local generating stations. The effect of such internal generation is factored into the TTC calculation for energy received from the neighboring system. For some interconnections, energy is transferred by switching generating units from one system to the other. Since the transfer capability in such instances considers the rated capacity of the generating units switched over rather than the output actually available, the calculated TTC for a given period may exceed the generation that can be transferred during that period. For interconnections where generating units must be isolated on the neighboring system, prior agreement shall be reached with the Generator operating the generating units for each reservation request for Transmission Service over such

interconnections, and this at the Generator's discretion. Single-contingency loss of load (SCLL) limit: The tripping of an interconnection being used for deliveries is equivalent to a loss of load on the Transmission Provider's system and results in a rise in system frequency. In order to ensure integrity of the Transmission Provider's system and continuity of service, the system operator limits the amount of load (MW) that can be tripped following a single contingency. This limit, called "SCLL", depends on the spinning capacity feeding the Transmission Provider's system and on the interconnection's location. The higher the spinning capacity, the higher the SCLL limit. Generally, spinning capacity increases with deliveries, decreases with receipts and follows changes in load. The SCLL limit is thus most constrictive at low loads and maximum receipts. The TTC for deliveries that the Transmission Provider establishes for each interconnection takes the SCLL limit into account. Single-contingency loss of generation (SCLG) limit: The tripping of an interconnection being used to receive power is equivalent to a loss of generation on the Transmission Provider's system and results in a drop in system frequency. In order to ensure integrity of the Transmission Provider's system, the system operator limits the amount of generation (MW) that can be tripped following a single contingency. This limit, called "SCLG", depends on the spinning capacity feeding the Transmission Provider's system. The higher the spinning capacity, the higher the SCLG limit. Generally, spinning capacity increases with deliveries, decreases with receipts and follows changes in load. The SCLG limit is thus most constrictive at low loads and maximum receipts. The TTC for receipts that the Transmission Provider establishes for each interconnection takes the SCLG limit into account.

Concurrent paths:

Certain portions of the Transmission Provider's system may supply more than one interconnection. Transfer capacity over such portions of the system may be less than the sum of the individual transfer capabilities of all interconnections supplied. ATC calculations factor in existing transmission commitments over such concurrent paths. Simultaneous wheel-in capacity: The total wheel-in capacity of the Québec Control Area varies as a function of system load, deliveries to neighboring systems, and the minimum generating capacity to be maintained on the system. This constraint could affect TTC values for receipts but is very rarely a limiting factor.

b. Existing transmission commitments (ETC):

i) ETC is the total amount of power that is already reserved over a path, plus capacity required for supplying Native Load and posted on OASIS.

ii) Since the Transmission Provider offers Point-to-Point Transmission Services over interconnections with neighboring systems, the ETC related to Native Load needs is represented directly by Point-to-Point (PTP) Service reservations designated as "QCRD and QCRDN entries".

iii) The ETC includes reservation requests for PTP service once they reach "Confirmed" status or, for long-term PTP service reservations, once the Service Agreement is executed.

iv) It is assumed that the customer will exercise rollover rights (ROR) associated with long-term PTP service reservations until such rights expire or are superseded by a competing requests under the provisions of Section 2.2 of Part I herein.

v) On a real-time horizon, if no schedule is received in association with an existing reservation, the transfer capability available for non-firm PTP services is increased by the amount reserved but not scheduled.

c. Available flowgate capability (AFC): AFC is used instead of ATC to estimate the transfer capability between Transmission Provider systems when transmission facilities in one of the systems involved are affected by power flows in the other systems. Given that the Transmission Provider's system is not subject to inadvertent power flows from neighboring systems since it is connected to them only by controllable interconnections, the flow gate concept does not apply to it.

d. Transmission reliability margin (TRM):

i) Definition of TRM

TRM quantifies inaccuracies associated with transfer capability forecasts. The inaccuracies are due to the variability of the following factors affecting the TTC calculation: system load, ambient air temperature, operating voltage of the interconnection system, internal generation on the interconnection system, and spinning capacity of the system as a whole. The TRM for some interconnections also includes uncertainty for unexpected transmission equipment failure, a reserve to cover system configuration changes that may be required as a result of Transmission Service

requests and parameters outside the Transmission Provider control (facility outages, system operating conditions and limits) that affect the transfer capability of neighboring systems. For interconnections where firm transfer capability is coordinated between the Transmission Provider's system and a neighbouring system, the definition of TRM corresponds to the higher of the following two values: (1) the TRM of the neighbouring system, and (2) the TRM of the Transmission Provider.

ii) TRM calculation method

TRM values are generally based on historical forecasting errors. On interconnections where Transmission Service requests may entail system configuration changes, TRMs are fixed values set on the basis of the configurations possible. For interconnections where firm transfer capability is coordinated between the Transmission Provider's system and a neighbouring system, the calculation of TRM for these interconnections corresponds to the difference between the total transfer capability (TTC) of the Transmission Provider and the firm transfer capability before the ETCs on the neighbouring system are taken into account.

iii) Databases for TRM calculations

The databases used for TTC calculations are also used to calculate TRM values.

iv) Application of TRM

TRM values are only used in calculating firm available transfer capability. A nil TRM is generally used in calculating non-firm available transfer capability.

e. Capacity benefit margin – CBM

CBM is a firm transfer capability reserved for importing power in an emergency situation. The Transmission Provider does not presently use CBMs in calculating ATCs.

QCRD firm, QCRND firm and QCRND non-firm Terminology and Application in Transfer Capability Equations

219. The proposed Attachment C-1 of the HQ OATT contains three acronyms that are used by HQT to represent the quantity of interconnection transfer capability that other HQ

divisions have a right to use when importing through an interconnection to serve native load⁵⁵.

220. These terms are represented as: QCRD, QCRND firm and QCRND non-firm and are used in the equations for “Existing Transmission Commitments” (ETC) which in turn are used when calculating the quantity of “Available Transfer Capability” (ATC) – that is transmission capability available at the interconnection after considering all existing committed uses.
221. In these calculations for Existing Transmission Commitments (ETC) and Available Transfer Capability (ATC), HQT proposes that these acronyms have the following meanings:
- (i) **QCRD:** "*Québec Ressource Désignée*" [designated resource for Québec], capacity of a resource posted on OASIS and designated by the Distributor as a resource for supplying Québec Native Load
 - (ii) **QCRND firm:** "*Québec Ressource Non Désignée*" [non designated resource for Québec], capacity of a resource posted on OASIS but not designated by the Distributor as a resource for supplying Québec Native Load
 - (iii) **QCRND non-firm:** "*Québec Ressource Non Désignée*" [non designated resource for Québec], capacity of a resource posted on OASIS by the Generator for supplying Québec Native Load and not designated by the Distributor.
222. These QC designations are either unnecessary or inconsistent with FERC Order 890 and in some cases inconsistent HQT’s own existing OATT.
- (i) **QCRD – Unnecessary**⁵⁶
223. First, while the four letter acronym QCRD has no FERC equivalent, the terms related to the acronym, and its related definition are consistent with the Network Integration Transmission service found in the FERC OATT and Native Load Service in section IV of the HQT OATT.
224. The specific, dedicated and quantifiable relationship between the use of the designated resource's capacity and the load that it serves permits the transmission operator to set aside specific transmission capability at the interconnection for the intended purpose which is to serve Quebec Native Load, as defined in section 1.7 of the HQT OATT from Distributor Resources, as defined in Section 1.51 of the HQT OATT.

⁵⁵ Transcripts, October 18, 2010, p.123 and following, Examination of Mr. Sylvain Clermont by Mr. Éric Dunberry. See also Transcripts, October 18, 2010, p.216 and following, Cross-Examination of Mr. Sylvain Clermont by Mr. André Turmel.

⁵⁶ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp.10-12, Exhibit C-13-47, Dr. Robert Sinclair PowerPoint presentation, p.19, Transcripts, May 2, 2011, p.48-49, Examination of Mr. Robert Sinclair by Mr. André Turmel.

225. However, the QCRD term is unnecessary given that it is not suitably documented and explained in the body of the OATT. QCRD is synonymous with Part IV firm native-load service.

(ii) **QCRND Distributor**

226. In response to NLH's concerns that the term QCRND firm was included in the ETC firm equation thus assigning firm native load transmission capacity to undesignated resources, in its June 30, 2011 pleading, HQT announced that QCRND firm was being re-named QCRND Distributor and it was being removed from the firm ETC value to reflect that it does not occupy firm ATC⁵⁷.

227. NLH welcomes this change that will satisfy NLH's principle concerns as long as the re-named "QCRND Distributor" is not included in the ETC FIRM equation.

228. However, NLH still does not see the need for this term, given that the term "Secondary service" as prescribed in HQT OATT section 36.3 fulfills this requirement.

(iii) **QCRND producer – inconsistent with HQT OATT Part IV and FERC Order 890⁵⁸**

229. At its June 30, 2011 pleading, HQT announced that QCRND non-firm is being renamed as QCRND Producer⁵⁹. However, no changes in the treatment of this designation were introduced.

230. The acronym QCRNDproducer its definition, its interpretation and its proposed use is inconsistent with HQT's existing OATT and FERC 890.

231. The description has characteristics that are similar to Secondary Service in the FERC OATT and the HQT OATT in that it refers to the servicing of Native Load from non designated resources and that non firm transmission capacity be set aside for this purpose.

232. However, the description of QCRND producer specifies that the production division of HQ, HQ Production, is entitled to this non firm native load transmission service to import energy to serve designated load on a non firm basis.

233. While the production division of HQ, HQP, has been vested with the responsibility to provide energy for the distribution division of the organization, it does so over transmission capacity which is acquired by the Distribution division for this purpose.

234. HQP does not acquire, nor require, transmission capacity at interconnections to serve native load, in the same manner that it does not require, or acquire, capacity within the body of the HQT system for this purpose.

⁵⁷ HQT's pleading on Theme 2, paragraphs 18 and 144.

⁵⁸ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp.10-12, Exhibit C-13-47, Dr. Robert Sinclair PowerPoint presentation, p. 21-24, Transcripts, May 2, 2011, p.49-53, Examination of Dr. Robert Sinclair by Mr. André Turmel.

⁵⁹ HQT's pleading on Theme 2, p.9, paragraph 35.

235. The very nature of this envisioned service violates both the PART IV of the HQT OATT and the Pro Forma 890 OATT.
236. PART IV of the OATT specifies that Native Load Service and Secondary Service are for use by the Distributor, in particular in the preamble section 36.1 “Scope of Service” and section 36.3 “Secondary Service”.
237. There is no provision for HQP to use part IV Native Load Service under any circumstances. This raises a fundamental inconsistency between Attachment C-1 and the proposed OATT. The Pro Forma OATT is also clear that network service is for load serving entities. In the Preamble to Section IV of the pro forma OATT:
- “Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load.”
238. Finally, HQT’s approach to allowing its affiliate to use Native Load Service violates the fundamental principle in the pro forma OATT of comparability. In particular, transmission owners must use the network in the same manner that is offered to other network customers. This is in the section 28.3 of the pro forma OATT:
- “The Transmission Provider will provide firm transmission service over its Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission Provider's use of the Transmission System to reliably serve its Native Load Customers.”
239. However, HQT’s network service does not provide access to network service by affiliated generators of network integration transmission customers.
240. Moreover, it appears as if the service being proposed for HQP is a variation to the “secondary type” service envisioned in HQT OATT 36.3. Such ‘Secondary Type’ services come with curtailment priority provisions that are superior to that of other generators who would be required to use non-form Point to Point transmission service at the systems interconnects to access the Quebec system.
241. Section 36.3, last sentence, identifies the curtailment relationship between Non-firm point to point service and secondary service when it states:
- ‘Deliveries from resources other than designated resources shall have a higher priority than any Non-Firm Point-to-point transmission service under Part II herein
242. Hence, the QCRND producer designation, while inappropriate in that it permits the generation division of HQ to use Native Load transmission service, is also an inappropriate transmission service product because it will confer preferential curtailment rights to HQP at the systems interconnections and for this reason the QCRND non-firm designation is also inconsistent with FERC 890 OATT and HQT’s OATT.
243. The QCRND producer designation should be removed from Attachment C-1.

244. The production division of HQ, HQP, has authority to serve only non-designated loads. In its desire to import energy to serve these loads it should be restricted to using Point-to-Point transmission service. This separation between the use of Native Load service and Point-to-Point service is a fundamental tenant of the FERC OATT.
245. Finally, at its June 30, 2011 pleading, HQT announced that QCRND non-firm is being renamed as QCRND Producer⁶⁰. However, no changes in the treatment of this designation were introduced. Accordingly, the objections discussed above are still relevant.
246. In the June 30 pleading 2011, HQT attempted to clarify the use of QCRND Producer. According to HQT, HQT appears to be allowing the producer to use native-load transmission service to serve native load from non-designated resources⁶¹.
247. In its pleading HQT indicated that this service is to be used only on a temporary basis during peak hours⁶². However, “temporary” and “peak hours” applicable in this context have not been defined.

Summary on QCRD firm, QCRND firm, QCRND non-firm:

248. In closing the HQT OATT should be modified to remove all QCRD and QCRND designations. The FERC 890 OATT and HQT OATT presently provide both the Network (Native Load) and Secondary transmission service products (HQT OATT section 36.3) which permit the Distributor to serve its designated loads from designated and non-designated resources while simultaneously permitting the transmission provider to plan and operate its system to meet its obligation to serve. The proper application and interpretation of the rules related to both Network and secondary service are articulated in the body of the OATT and in FERC decisions.
249. To facilitate the calculations for ATC and ETC where Native Load and Secondary transmission service are in use, acronyms specific to those designations should be developed to avoid any confusion on use or interpretation.
250. To represent Native Load transmission service in the ATC_{firm} and ETC_{firm} calculations at interconnections, it is recommended that that an acronym similar to that used for Network Integrated Transmission service (NITS) be developed and used. The acronym NATS, for Native load Transmission Service is suggested.
251. As a guide for determining the proper use of the proposed NITS term the use of the NATS terms can be examined in the existing attachment C-1 equations. The real time ETC equation in that attachment is written as:

$$(i) \quad ETC_{firm} = QCRD + NITS_{firm} + PTP_{firm} + GF_{firm} + OS_{firm}$$

$$(ii) \quad ETC_{non-firm} = QCRND_{non-firm} + NITS_{non-firm} + PTP_{non-firm} + GF_{non-firm} + OS_{non-firm}$$

⁶⁰ HQT’s pleading on Theme 2, p.9, paragraph 35.

⁶¹ HQT’s pleading on Theme 2, pp.7-9.

⁶² HQT’s pleading on Theme 2, paragraphs 146 to 156.

252. To represent Secondary transmission service in the ATC and ETC calculations at interconnections it is recommended that an acronym similar to that used for secondary service by Network customers (NITS non-firm) be developed and used. It is suggested that the acronym NATS non-firm, to represent secondary service for Native load Transmission Service customers be used. The transmission rights associated with the acronym used to represent Secondary service must be non firm as per paragraph 1606 of the FERC 890 final rule and reflected only in the non-firm equations.

1606. The Commission clarifies that secondary service must be requested in accordance with section 18, including the timing restrictions set forth in section 18.3, of the FERC 890 pro forma OATT. Secondary service is on an as-available basis, and network customers should not be permitted to lock in such service in advance of other non-firm uses of available transmission.

Treatment of Queued Service Requests in ETC Determination

253. Attachment C in the current HQT OATT and attachment C-1 of the proposed HQT OATT differ in the manner by which applications for transmission service are treated in the Available Transfer Capability (ATC) calculations.

254. In its present form the HQT OATT considers queued applications for Transmission service as Existing Transmission Commitments (ETC) within ATC calculations whereas the proposed OATT does not. Section 1 C of the current OATT states;

“1. Available Transmission Transfer Capability (ATC) is the amount of unused transfer capability after consideration of the system reliability margin and requirements to:

[...]

(c) meet obligations of existing accepted or queued valid Applications for Transmission Service.”

255. The proposed wording in HQT’s Attachment C -1 has removed “queued applications” from the list of Existing Transmission commitments, as follows:

“1. Available Transfer Capability is the portion of Total Transfer Capability (TTC) that is unused after consideration of Transmission Reliability Margin (TRM) and requirements to:

[...]

(c) meet obligations of accepted Applications for Transmission Service.”

256. This change is also reflected in the Attachment C-1, “Basic equations for calculating transmission capability”:

“3. Transfer capability components:

[...]

b. Existing transmission commitments (ETC):

iii) The ETC includes reservation requests for PTP service once they reach “Confirmed” status or, for long-term PTP service reservations, once the Service Agreement is executed.”

257. Based on the proposed wording in section 3 b) (iii) it appears that for PTP service, only applications for service which have been confirmed or for which a service agreement has been signed are included in Existing Transmission Commitments for purposes of the ATC calculations. There is no reference to inclusion of queued service requests.

258. However, this is not consistent with North American Energy Standards Board (NAESB) which provides that, Point To Point service requests, regardless of status as “confirmed” or the status of a service agreement, have first rights to available transfer capacity (ATC) over requests that arrive later, unless these latter requests have some other priority, such as higher firmness, longer duration, etc.

259. Section 4.13 of NAESB Wholesale Electric Quadrant Business Practices Standards states:

“Competing bids exist when multiple requests cannot be accommodated due to a lack of available transmission capacity. One general rule is that OASIS requests should be evaluated and granted priority on a first-come-first-served basis established by OASIS QUEUED time. Thus, the first to request service should get it, all else being equal.

Exceptions to this first-come-first-served basis occur when there are competing requests for limited resources and the requests have different priorities established by FERC regulations and filed tariffs. Prior to the introduction of price negotiations, the attribute values that have served as a basis for determining priority include:

I. Type (Network, Point-to-point)

II. Class (Firm, Non-Firm)

III. Increment (Hourly, Daily, Weekly, Monthly, Yearly)

IV. Duration (the amount of time between the Start Date and the Stop Date)

V. Amount (the MW amount)”

260. Furthermore, this proposed change in wording in Attachment C-1 is not consistent with HQT’s Attachment D – Methodology for Completing a System Impact Study – which indicates that:

“The system Impact Study is conducted as follows:

[...] meet obligations for accepted or queued valid applications under the OATT”

261. This appears to contradict the exclusion of queued requests from the determination of existing transmission commitments.
262. In addition to violating NAESB business practices, the inconsistencies created within the HQT OATT, presents at least two challenges with respect to the fair application of terms of service to transmission customers.
263. First and most importantly, is the implication of the change in the context of the competitive advantage as discussed below held by the transmission provider and its affiliates, particularly in the absence of an open planning policy.
264. Second, if HQT is going to depart for the NAESB business practices, there will need to be transitional guidelines covering requests already in the queue.

Increased potential for competitive advantage and a requirement for transitional guidance


265. A competitive disadvantage can potentially arise under the proposed wording of Attachment C-1, particularly in the absence of an open and transparent planning process. To illustrate this potential advantage the following scenario is presents
266. If one assumes that a non-affiliated transmission customer is less knowledgeable about the transmission provider's system, than the transmission provider's affiliate, then it is reasonable to assume that the affiliate is in a better position than the non-affiliate to enter into an expedited service agreement. In this context, circumstances can arise whereby the elimination of queuing priority could increase the potential for competitive advantage.
267. Such a circumstance arises when a customer submits a request for a transmission reservation which requires a system impact study to determine if the service can be provided, followed by a facilities study.
268. The customer must wait for the facility study results to inform his decision to purchase the service. During that time period, the transmission provider's affiliate can, enter into an expedited agreement for service over that same path. If the priority for service is maintained through a queuing process, as apposed to a priority based on signed service agreements, this competitive advantage inherent to the affiliate is not present.
269. Second, if the Regie were to approve an open and transparent planning policy conforming to the requirements of FERC's attachment K which would remove the competitive advantage of the affiliate, any changes to the existing wording which may change the rank, priority or ETC status of requests presently in the queue, should be accompanied by guidance from the Regie to ensure that the existing priority and ETC status of customers in the queue remains unchanged.
270. The Regie should specifically maintain the rights of those presently in the queue and provide transitional direction on how to deal with these customers.

Data Exchange and ATC Harmonization

271. HQT witness Mr. Philip Hanser addressed the issue of ATC harmonization proposed by HQT (in the proposed Attachment C-1 to the revised HQT OATT). The harmonization process (called “lowest common denominator approach” by Mr. Hanser), is a simple process whereby HQT will lower its ATC value when the corresponding ATC value on the neighboring system is lower⁶³.
272. Mr. Hanser testifies that this process satisfies the “ATC Coordination and data exchange” requirement of FERC Order 890⁶⁴.
273. As NLH witness Dr. Sinclair explained, the data exchange proposed by Mr. Hanser falls short of that required in Order 890⁶⁵. Dr. Sinclair presented the following table that compares the data proposed by HQT and the data proposed by Order 890:

HQT Witness Mr. Hanser		
The proposed “coordination and exchange” does not satisfy Order 890 principles;		
<u>Compare proposed HQT OATT to Order 890</u>		
<u>HQT’s data Exchange</u>	<u>Order 890 Data Exchange</u>	
(1) “Firm Capacity”	(1) Load	(6) ATC
(2) TRM	(2) Transmission Outages	Frequency
	(3) Generation Outages	(7) Source/Sink ID
	(4) Base Generation	
	Dispatch	
	(5) Transmission bookings	

See RAS-1 pp. 37;



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274. The table is self-evident – HQT’s proposed data exchange is considerably less than that proposed in Order 890.
275. The intention of the Order 890 Data exchange is to allow coordination of the underlying data involved with ATC calculation. Mr. Hanser’s proposed exchange is simply an exchange of the final ATC values. As Dr. Robert Sinclair explained, this is the second step in the coordination process:

“The first step is ensuring accurate ATC values. This process is facilitated by data exchange. An exchange of inputs and assumptions

⁶³ Transcripts, October 18, 2010, pp. 147-156, Mr. Philip Hanser Examination by Mr. Éric Dunberry.

⁶⁴ Exhibit HQT-28, document 1, Expert Report of Mr. Philip Hanser at paragraph 16.

⁶⁵ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp.36-40, Exhibit C-13-47, Dr. Robert Sinclair PowerPoint presentation, p. 43-44, Transcripts, May 2, 2011, p.67 and following, Examination of Dr. Robert Sinclair by Mr. André Turmel.

may increase one of the two ATC values on a border. If this data exchange process changes the more restrictive of the two values, the ATC will increase and the underlying value of the transmission assets will be unlocked.”⁶⁶

276. In addition to being incomplete, Dr. Robert Sinclair explained in his written testimony, the harmonization proposed by Mr. Hanser can lead to undue discrimination:

“The harmonization proposed by HQT permits HQT to adopt the ATC value calculated by an adjacent system if the ATC value calculated by that system is lower than the corresponding value calculated by HQT. When this process results in a decline in the ATC value on the HQT system, the interface may be “oversubscribed.” This means there would be more firm commitments on the interface than there is firm transmission capacity. The potential for undue discrimination exists because the transmission owner must allocate the smaller amount of capacity among the competing customers with existing transmission service rights. In the case of HQT, there is an affiliated entity, Hydro Quebec Production (HQP) that has a strong interest in retaining its full capacity rights. HQT thus has the incentive to allocate the scarce interface capacity to its affiliate.”⁶⁷

277. Dr. Sinclair explained that reductions in ATC that result from the harmonization process should be allocated pro rata among the holders of firm transmission rights. He also explained that HQT has the incentive to allocate scarce capacity to its affiliate when harmonization is applied. Indeed, HQT has acted on these incentives in the case where Brookfield sought to exercise rollover rights on an interconnection where harmonization was applied⁶⁸.
278. During these proceedings, HQT have implied that because deliveries into New York and New England that exceed 1200MW are conditional on a reliability assessment in each of these markets, then HQT should not sell firm Point-to-Point capacity into these markets in excess of 1200MW.
279. The rationale for this limit is derived from the reasoning that if transmission capacity to these markets was sold in excess of 1200MW, then a portion of the customer group sharing the interconnection would not be able to exercise its Firm rights and deliver energy as it sees fit. As a result the customer would have purchased a Firm Point-to-Point transmission product which does not always have utility.
280. However, both the NE and NY markets are structured in such a way as to provide NO guarantees to any HQT Firm Point-to-Point customer regarding the certainty that either NE or NY will accept the energy that the HQT customer wishes to flow. This is the case

⁶⁶ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp.36-37, Exhibit C-13-47, Dr. Robert Sinclair PowerPoint presentation, p. 45-47.

⁶⁷ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, p.38, Exhibit C-13-47, Dr. Robert Sinclair PowerPoint presentation, p. 45-47.

⁶⁸ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp.37-39, Exhibit C-13-47, Dr. Robert Sinclair PowerPoint presentation, p. 45-47.

even if the firm capability at each interconnection is limited to 1200MW or limited to some lesser value.

281. Both the NE and NY markets accept energy based on two criteria. Those being price and Volume (capacity):

“[320] Though ISO New England believes this proposal would not create an undue burden, it urges the Commission to allow for variety in the illustration of the process flow diagram. Regarding the proposal to require a “detailed explanation” of the calculation of ATC, TTC, ETC, and TRM components, ISO New England argues that the relevant inputs can change on a daily basis because ATC for Pooled Transmission Facilities (PTF) in New England is a function of market conditions, as opposed to an administratively derived calculation. In ISO New England’s view, the level of detail required should reflect the operation of competitive markets. MISO is concerned that the NOPR does not address transparency and regional coordination issues arising at the seams between market and non-market areas, particularly with respect to ATC calculations.”⁶⁹

282. As a result even if HQT were to limit the flow into NE or NY to 1200MW, there is still no guarantee that the firm transmission rights holder in Quebec will have the opportunity to exercise these rights and flow energy into either of these markets. Energy will only flow if the price is suitably low, in comparison to other NE or NY resources⁷⁰.
283. As a result, regardless as to whether or not HQT were to sell 1200MW, 1500MW or 900MW of Firm capacity into each of these markets, the transmission rights holder has no right or guarantee to flow energy via their transmission service agreements.
284. Flow for any rights holder is also conditional on the price at which it will be sold for in either the NE or NY market places. In the end no HQT customer will pose a physical right to flow into a financially dispatched market.
285. Revisions to the OATT on this issue have to be cognoscente of the market structure into which the energy is being sold.
286. With respect to flow on interconnections into physical markets, the same principle applies; it is not the role of the transmission provider to limit the market risk exposure of market participants by limiting the TTC below the physical capabilities of the HQT system.
287. NLH recommends the following: (1) HQT should commit to developing a data exchange with neighboring systems, including synchronously-interconnected Labrador, that meets the minimum requirements of Order 890; (2) Firm ATC reductions resulting from harmonization should be allocated pro rate in accordance with existing firm rights.

ii) Attachment K – Coordinated, Open and Transparent Planning

⁶⁹ FERC Order 890, paragraph 320.

⁷⁰ ISO New England Calculation of TTC for External Interfaces and ATC for PTF Interfaces Version 3.0 Issued on: December 1, 2008, Sections 6 and 7. [Onglet 5]

288. One of the core components of the Order 890 transmission tariff reforms is the requirement that transmission providers adopt a coordinated, open, and transparent transmission planning process that invites meaningful participation by transmission customers, regulators, and other stakeholders. This coordinated planning process was required to be “specific and clear” and included in an Attachment K to the *pro forma* OATT.
289. In its proposed OATT, HQT did not provide an Attachment K. Instead, HQT made two main claims to avoid the Attachment K provision. First, that the Order 890 coordinated planning process was motivated by deficient infrastructure in the U.S. which is not a pertinent issue in Québec. Second, that the existing regulatory and planning processes in Québec are sufficient to meet the objectives of coordinated planning⁷¹.
290. However, both claims fail to justify HQT’s omitting a coordinated planning process from its proposed OATT. As explained herein, HQT ignored another equally important motivation for coordinated planning that even its own witness recognized: to promote open access and prevent undue discrimination⁷².
291. The motivation for coordinated planning under Order 890 is not confined to addressing the infrastructure situation in the U.S. Regarding HQT’s second claim, we explain why the existing regulatory processes do not meet the open and transparent processes envisioned by Order 890.
292. In fact, Order 890 and the FERC’s Open Access policies in general are focused on vertical market power and mitigating that market power to promote competition in wholesale electricity markets.
293. In Order 890, one of FERC’s motivations was to stimulate infrastructure development. However, it must be recognized that this stimulus was to come by removing incentives for discrimination. At the very outset of the Order 890 coordinated planning discussion, FERC connects the infrastructure development directly to discrimination. For example at Order 890, paragraph 422:
- “Although many transmission providers have an incentive to expand the grid to meet their state-imposed obligations to serve, they can have a disincentive to remedy transmission congestion when doing so reduces the value of their generation or otherwise stimulates new entry or greater competition in their area. A transmission provider also does not have an incentive to increase the import or export capacity of its transmission system if doing so would allow cheaper power to displace its higher cost generation or otherwise make new entry more profitable by facilitating exports.”
294. In short, the FERC motivation to spur infrastructure investment is related to FERC’s motivation to further eliminate undue discrimination that would then lead to additional investment.

⁷¹ HQT’s pleading on Theme 3.

⁷² Transcripts, October 21, 2010, pp. 84 and following, Mr. Judah Rose Cross Examination by Mr. André Turmel.

Coordinated Planning Requirements

295. Coordinated, open, and transparent planning refers to the general objectives in Order 890 to establish industry-wide processes and standards that facilitate broader participation in the planning and expansion of the transmission grid. Importantly, this involves inviting participation by transmission customers and other stakeholders to regular planning meetings and providing these entities with greater information and access to planning data and models.
296. A main motivation for reform of the planning process under Order 890 is based on the recognition that despite general requirements to plan the transmission network to meet the needs of all transmission customers, transmission providers had adverse incentives to use the planning process to their own competitive advantage. Order 890 states the rationale for initially launching the reform:

“[1426] In order to provide for more comparable open access transmission service, limit the potential for undue discrimination and anticompetitive conduct, and satisfy its statutory responsibilities under section 217 of the FPA [concerning infrastructure], the [FERC] proposed to amend the pro forma OATT to require coordinated, open, and transparent transmission planning on both a local and regional level.”

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

[1435] In order to limit the opportunities for undue discrimination ... and to ensure that comparable transmission service is provided by all public utility transmission providers, including RTOs and ISOs, [FERC] concludes that it is necessary to amend the existing pro forma OATT to require coordinated, open, and transparent transmission planning on both a local and regional level.

298. As explained more below, HQT witness Mr. Rose also agreed that the FERC emphasized undue discrimination in implementing the coordinated planning process.

Order 890 Principles

299. Order 890 requires that each transmission provider include an attachment to its OATT that documents the existence of a coordinated and regional planning process that complies with principles established in the Order:

“[437] Accordingly, each public utility transmission provider is required to submit, as part of a compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with the planning principles and other requirements in this Final Rule.²⁴⁶ In the alternative, a transmission provider (including an RTO or an ISO, as discussed below), may make a compliance filing in this proceeding describing its existing coordinated and regional planning process, including the appropriate language in its tariff, and show that this existing process is consistent with or superior to the requirements in this Final Rule. Under either of these approaches, the process must be documented as an attachment to the transmission provider’s OATT.”

300. Transmission providers with existing planning processes must show such processes are “consistent with or superior to” the requirements in the Order.
301. A planning process that meets the minimum requirements of the Order would meet at least nine principles. The Order explains these principles in detail. Although all of the planning principles are important, the first four of the nine principles (coordination, openness, transparency, and information exchange) define the essential nature of the proposed changes: to establish a process that incorporates transmission customers and others and provides these entities with information that gives them meaningful participation.
302. The Order provides extensive discussion of various ways meaningful participation can be attained. For example, the process should allow participants to replicate the planning studies:

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

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

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

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

(1) *Attachment K, Infrastructure, and Undue Discrimination*

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

« Aux États-Unis, la pertinence d'ajouter un processus de planification ouvert et transparent, l'appendice K de l'OATT pro forma, vise principalement à combler la déficience d'investissements en infrastructure de transport. »⁷³

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

306. As explained above, while it is true that FERC discussed the objective of accelerating transmission investment in Order 890, it sought to accelerate investment that was otherwise prevented as a result of discriminatory practices.

307. In particular, the exclusion of transmission customers and other stakeholders (including regulators) from meaningful participation in planning processes is seen by the FERC as an opportunity for transmission owners to expand the grid for its own uses and limit investment needed by others.

308. This is clear at many places in Order 890 – consider, for example, paragraph 84:

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

309. Consider also paragraph 422:

⁷³ Exhibit HQT-1, document 1, p.13. See also HQT’s pleading on Theme 3, paragraphs 15 to 22.

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

310. And at paragraph 425:

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

311. And at paragraphs 524:

“[524] [...] A transmission provider has little incentive to upgrade its transmission capacity with its interconnected neighbors if doing so would allow competing suppliers to serve the customers of the transmission provider. We therefore find, as discussed in greater detail above, that greater coordination and openness in transmission planning is required, on both a local and regional level, to remedy undue discrimination. The coordination of planning on a regional basis will also increase efficiency through the coordination of transmission upgrades that have region-wide benefits, as opposed to pursuing transmission expansion on a piecemeal basis. The specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices.

312. In addition to clear FERC concerns, HQT witness Mr. Rose himself agreed that the coordinated planning process was aimed in part at addressing discrimination:

“The second reason [for coordinated planning] was, in FERC’s view, that inadequate planning might facilitate discrimination by transmission providers.”⁷⁴

313. He also states in his direct counter evidence:

“FERC was concerned that U.S. transmission providers would use transmission planning to discriminate against unaffiliated companies.”⁷⁵

314. Despite the obvious concerns about discriminatory conduct and how coordinated planning can remedy such concerns, HQT does not adequately address these concerns.

⁷⁴ Exhibit HQT-8, document 6.1, p.2, paragraph 2.

⁷⁵ Exhibit HQT-12, document 1, p.8.

315. In its initial filing HQT makes the unsupported statement that the regulatory regime in Québec operates to prevent undue discrimination. The only explanation given by HQT as to how undue discrimination is addressed in Québec occurs Exhibit HQT-8 document 6.1.

316. In particular, Mr. Rose states:

“[I]t is necessary to understand whether there is “significant and recurring congestion” within the TransEnergie Interconnection when assessing the potential for discrimination and the type of coordinated, open and transparent transmission planning needed.”⁷⁶

317. We first sought to clarify Mr. Rose’s opinion regarding the connection between discrimination and congestion. Based on information requests and cross-examination, we conclude that it is not Mr. Rose’s opinion that congestion is necessary for discrimination.

318. NLH issued information requests to Mr. Rose concerning the types of discrimination that are possible by a transmission provider. In response to NLH information request, Mr. Rose confirmed that one type of discrimination is “Favoring affiliated generation sources in structuring the grid.”⁷⁷

319. However, in cross-examination, Mr. Rose agreed that this kind of discrimination can occur even if there is not transmission congestion:

“Counsellor Turmel: So, my following question was can [this type of discrimination] by transmission providers occur in the absence of congestion?”

Mr. Rose: Yes, there is the possibility of discrimination without congestion.”⁷⁸

320. Mr. Rose also confirmed that “[a] transmission provider can offer service that is not comparable to what it provides itself or affiliated companies, or deny service to others.”⁷⁹

321. Asked about this in cross-examination, Mr. Rose agreed that congestion is not necessary for this kind of discrimination:

“Counselor Turmel: And can these theoretical actions that we just discussed by transmission providers occur in the absence of congestion again?”

Mr. Rose: Yes. Again, discrimination can occur in the absence of congestion.”⁸⁰

⁷⁶ Exhibit HQT-8, document 6.1, p.2, paragraph 11.

⁷⁷ Exhibit HQT-29, document 5.2, question 2a.

⁷⁸ Transcripts October 21, 2010, pp. 87-88, Mr. Judah Rose Cross Examination by Mr. André Turmel.

⁷⁹ Exhibit HQT-29, document 5.2, question 6.

⁸⁰ Transcripts October 21, 2010, pp. 87-89, Mr. Judah Rose Cross Examination by Mr. André Turmel.

322. Similarly, Mr. Rose confirmed that a transmission provider can “unfairly allocate upgrade costs.”⁸¹

323. In cross-examination Mr. Rose agreed that this can occur in the absence of congestion:

“Counselor Turmel: So, can [this type of discrimination] by transmission providers occur in the absence of congestion?

Mr. Rose: Yes, they can.”⁸²

324. Therefore, even if Mr. Rose is correct and there is an absence of congestion in Quebec (a point that NLH is not in agreement with), in his own opinion, discrimination can still occur. Hence, without the Order 890 coordinated planning provisions, FERC’s undue discrimination concerns would not be addressed in Quebec.

325. Furthermore, Mr. Rose addresses various measures of congestion in Quebec in an attempt to demonstrate that congestion Quebec is relatively congestion free. However, all of Mr. Roses’ measures of congestion are those that occur in the operating horizon.

326. Order 890 is concerned with Planning Horizon congestion. For example, see Order 890 at paragraph 547:

“[547] The intent of [the Attachment K Economic Planning Studies Principle] is to allow customers, not the transmission provider, to identify those portions of the transmission system where they have encountered transmission problems due to congestion or whether they believe upgrades and other investments may be necessary to reduce congestion and to integrate new resources.”⁸³

327. In summary, as we explained above, one of the main motivations for coordinated planning under Order 890 is to remedy undue discrimination. Both FERC and HQT witness Mr. Rose recognize this.

328. As a result, without an Order 890 coordinated planning process, the remedial benefits that would lessen discrimination will not be present in the HQT OATT. HQT did not explain how transmission users would be protected from this potential discrimination without the coordinated planning process.

329. Accordingly, the Regie should require HQT to amend its OATT to include an Attachment K that provides the details of a coordinated, open planning process envisioned in Order 890.

(2) Adequacy of Other Québec Regulatory Processes

330. As explained above, HQT claims existing regulatory process are sufficient to meet the coordinated planning requirements of Order 890⁸⁴. In its initial filing of the proposed

⁸¹ Exhibit HQT-29, document 5.2, Question 7.

⁸² Transcripts October 21, 2010, page 87-89, Mr. Judah Rose Cross Examination by Mr. André Turmel.

⁸³ Transcripts, May 2, 2011, pp. 81-82, Mr. Robert Sinclair Examination by Mr. André Turmel.

⁸⁴ HQT’s pleading on Theme 3, paragraphs 148 to 238.

HQT Tariff, HQT cited the Régie Transmission Investment process as sufficient to meet the coordinated planning requirements.

331. HQT then offered Mr. Rose as a witness to explain the investment approval process as well as to expand on other processes in Quebec that are claimed to be sufficient to meet the Order 890 coordinated planning requirements. According to Mr. Rose “TransEnergie already offers coordinated, open and transparent planning that is comparable to Attachment K”.⁸⁵
332. The processes he cites are generally processes that have comparable counter-parts in the U.S.⁸⁶. Hence, as FERC contemplated planning reforms under Order 890, it was aware of such existing processes and acted to strengthen the planning requirements nonetheless.
333. Clearly, by issuing the coordinated planning requirements, FERC found that the existing processes were not adequate to advance open access objectives. As a result, the various processes in Quebec will not achieve the remedial affects sought by the Order 890 coordinated planning requirements.
334. Despite these facts, HQT holds out such processes as adequate to meet the new standards. In examining the various processes offered by HQT as Order 890 substitutes, one sees they do not meet the minimum Order 890 requirements.
335. Mainly, Mr. Rose identifies contested hearings as the main vehicle to address coordinated planning in Quebec. These include:
- Régie Investment Authorization Process (Section 73 of the *Act respecting the Régie de l'énergie*);
 - Rate cases before the Régie de l'énergie;
 - Filing Guidelines before the Régie de l'énergie; and
 - OATT process before the Régie.
336. In all of these processes, transmission customers are separated from direct technical discussions among technical experts and there is no direct information sharing and, instead, transmission customers participate through formal proceedings as interveners after the planning studies have been planned and completed.⁸⁷
337. While these formal procedures are necessary in the context of the specific proceedings, and Régie has the competency and resources to assess the issues at hand, it prevents a collaborative process like the one envisioned in Order 890. Indeed, one of the stated justifications for reforming the planning process is the disadvantage faced by transmission customers when excluded from the transmission planning⁸⁸ process and

⁸⁵ Exhibit HQT-8, document 6.1, paragraph 87.

⁸⁶ See transcripts, May 2, 2011, p.83, Dr. Robert Sinclair Examination by Mr. André Turmel.

⁸⁷ Exhibit C-13-47, pp. 71-82 and transcripts, May 2, 2011, pp. 83-94, Dr. Robert Sinclair Examination by Mr. André Turmel.

⁸⁸ Order 890 goes on to note:

having to become involved only after the fact in a regulatory proceeding. As explained in Order 890:

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

338. The Régie processes, because they are approval or review processes, are “after the fact” and consider the outcome of particular studies and models. These processes are not designed or intended to allow other parties to be involved in the early part of the process to search for alternatives.
339. A coordinated planning process as envisioned in Order 890 is superior to a regulatory proceeding because stakeholders are involved at a much earlier stage and are provided critical information. In a regulatory proceeding, the transmission owner conducts the planning studies unilaterally and then proposes the projects to regulators.
340. In order to get access to the details of the underlying results and models (like Order 890 aims to do) transmission customers must use the information request process. This is cumbersome, introduces delays, and often is characterized by reluctance on the part of the receiving party to provide the critical information.
341. Moreover, the requesting parties are at a disadvantage because they have not participated in the planning studies and were not exposed to nuances of alternative upgrade and expansion options. As NLH witness Dr. Robert Sinclair describes:

“[T]he information request process requires precise written requests that can sometimes be misunderstood by the receiving party. Worse, a slightly imprecise request can be used to justify a non-response. For example, in a recent proceeding at the Régie, involving ATC calculations (Cases 110-1565, et al.), NLH submitted a request to HQT asking for the electronic version of the base power flow case that supported the ATC calculations. The request was written as follows:

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

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

Le cas de base est décrit dans les données déjà fournies à NLH. Ce cas de base est décrit dans les écoulements de puissance transmis à NLH le

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

17 janvier 2008 de façon confidentielle conformément à l'entente de confidentialité signée par NLH en date du 11 janvier 2008.

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

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

“Consider also an example from the present case. The following request by NLH (information request 16.1):

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

“HQT responded:

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

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

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

“These are only simple and clear examples of the disadvantage that transmission customers can experience when trying to use regulatory proceedings as a way to protect their interests in the transmission planning process. Of course, unreasonable responses to information requests can be appealed and litigated. However, this tends to delay proceedings and while a just outcome may prevail, using litigation as a means to exchange information is far less efficient than a coordinated, open process that serves to avoid after-the-fact disputes”⁸⁹

⁸⁹ Exhibit C-13-24, Dr. Robert Sinclair Amended Direct Testimony at pp.19-21.

342. Aside from the process identified by Mr. Rose that are contested proceedings, Mr. Rose offers several other processes (all of which have comparable counter-parts in the U.S.) that he claims satisfy the Order 890 coordinated planning requirements.⁹⁰

343. We will address each of the processes individually:

(1) *System Impact Study Process*

344. Of course the SIS process requires the transmission provider to study the effects of a requested project. It hardly needs to be said that FERC was fully aware of the System Impact Studies in its own pro forma OATT when it found that further planning reforms were required.

345. Unless the HQT SIS process provides coordination benefits beyond the standard process in the pro forma OATT (something HQT does not claim), we do not understand how it can be offered as meeting coordinated planning goals.⁹¹

(2) *Northeast Power Coordinating Council*

346. All major U.S. utilities belong to this organization or to one of its sister organizations which make up the North American Electric Reliability Council. While Mr. Rose seems to describe the organization and its process accurately enough, he admits it is for reliability issues only and economic and market issues are not addressed.

347. Of course, economic and market issues are emphasized by FERC (Order at paragraph 547). Moreover, because FERC was obviously aware of widespread participation by US utilities in these organizations, Mr. Rose does not explain how HQT's membership provides any more benefit to transmission customers than provided to U.S. members that are judged by FERC to be in need of reform of their planning.⁹²

(3) *Consultation Process on Environmental Impact*

348. Mr. Rose cites consultation on environmental review as a process to participate in coordinated planning. However, this process is governed by formal procedures much like the contested hearings offered up by HQT.

349. Accordingly, it does not provide the collaborative arrangement envisioned in Order 890. Moreover, it addresses issues far removed from the important economic and market issues that are the focus of Order 890.⁹³

(4) *HQT's Code of Conduct*

⁹⁰ Exhibit HQT-8, document 6.1, paragraph 46-84.

⁹¹ Exhibit C-13-47, p. 78 and transcripts, May 2, 2011, pp. 90-91, Dr. Robert Sinclair Examination by Mr. André Turmel.

⁹² Exhibit C-13-47, p. 79 and transcripts, May 2, 2011, pp. 91-92, Dr. Robert Sinclair Examination by Mr. André Turmel.

⁹³ Exhibit C-13-47, p. 80 and transcripts, May 2, 2011, pp. 92, Dr. Robert Sinclair Examination by Mr. André Turmel.

350. Mr. Rose's reference to the HQT's code of conduct cannot be interpreted as supportive of coordinated planning envisioned under Order 890 because it is only a reference to non-discrimination.
351. Such general statements of non-preference as are contained in the Code of Conduct are the bare minimum requirements for open access. It is important to note that HQT's form of vertical separation between transmission and the rest of HQ is the weakest of all possible functional separations.
352. In the U.S., most utilities have much stronger separations between transmission and the rest of the utility, including divestiture of generation, membership in an RTO, and independent coordination and monitoring. The Code of Conduct therefore does not provide any assurance that HQT is meeting the requirements of Order 890.⁹⁴

(5) *Coordination among Transmission Providers and Regulators.*

353. Mr. Rose claims HQT is achieving coordinated planning objects envisioned by Order 890 because only a single regulator is involved in the regional planning and HQT is the single major transmission provider.
354. In making his conclusions regarding regulation, Mr. Rose is confining himself to transmission and regulation within Quebec. He ignores the fact that a large AC interconnection exists with Labrador. Especially because HQT and NLH have been involved together in a number of complex issues involving this interconnection, it seems inappropriate to ignore this aspect of the HQT system when addressing coordinated planning.
355. NLH uses the interconnection to wheel power through Quebec and is involved in projects that will likely seek further use of the Quebec system. A coordinated planning process would allow NLH to have meaningful participation in the planning for its use of the system.
356. However, NLH has been limited to current HQT OATT processes which Order 890 has found to be ineffective for these purposes.⁹⁵

(6) *Coordination with Neighboring Systems*

357. Mr. Rose cites coordination with neighboring systems as evidence of coordinated planning that satisfies Order 890. He cites two sets of agreements, one is a set of Asset Owners Agreements and the other is a set of Interconnection Agreements.
358. Both set of agreements are essentially the same to the extent that they focus on maintaining the reliability and operability of the HQT DC interconnections with neighboring systems. Of course, these agreements do not enable coordination for

⁹⁴ Exhibit C-13-47, p. 81 and transcripts, May 2, 2011, pp. 92-93, Dr. Robert Sinclair Examination by Mr. André Turmel.

⁹⁵ Exhibit C-13-47, p. 81 and transcripts, May 2, 2011, pp. 92-93, Dr. Robert Sinclair Examination by Mr. André Turmel.

economic objectives and do not extend to the AC interconnection with Labrador, two factors which indicate a failure to meet Order 890 objectives.⁹⁶

Summary of HQT Filing

359. As explained above, HQT has not filed an Attachment K under the claims that (1) FERC's intentions were aimed at inadequate infrastructure in the U.S. and (2) existing processes were adequate to meet the Order 890 objectives.
360. We explained that infrastructure concern is really part of a larger discrimination concerns. HQT witness Mr. Rose suggests, but does not fully affirm, that an absence of transmission congestion will alleviate discrimination.
361. However, such a claim does not withstand even mild scrutiny. Mr. Rose himself backs away from the connection and, even if a lack of congestion did ease discrimination concerns, neither Mr. Rose nor other HQT witnesses, established an absence of congestion on the HQT system. Hence, the record does not show that HQT meets the Order 890 coordinated planning objectives that would introduce the remedial benefits to lessen discrimination.
362. With regard to existing process, Mr. Rose introduces a variety of existing process in Quebec and concludes that these processes meet the objectives of Order 890 coordinated planning.
363. The process cited all have comparable counterparts in the U.S. and, despite this, FERC has required significant reform of the planning process. If the Regie were to accept HQT's claim, there should be a showing that the processes in Quebec go beyond the comparable processes in the US.
364. This is especially true with respect to economic planning studies, which are present in none of the Quebec processes but is a key to the coordinate planning in Order 890.
365. In pleading this topic, HQT counsel Ms. Hivon cited two instances in Canada when FERC had accepted variations on Open Access Tariffs; this was the case of Ontario IESO and Alberta. In both cases, when Ms. Hivon summarized the FERC's rationale, she described reasoning that emphasized the comparability of how the Ontario and Alberta OATTs required all customers to abide by the same term and conditions.⁹⁷
366. The difference between these two cases and the case of HQT's Attachment K is that HQT is proposing to allow its own native load to participate in planning for its needs, but will exclude other customers. This is not in the spirit of comparability that was the basis for the FERC's Ontario and Alberta conclusions.
367. In summary, the Regie should require HQT to develop a coordinated planning process that meets the minimum requirements of Order 890.

⁹⁶ Exhibit C-13-47, p. 82 and transcripts, May 2, 2011, pp. 93-94, Dr. Robert Sinclair Examination by Mr. André Turmel.

⁹⁷ HQT's pleading on Theme 3, pp. 74 to 77. See also transcripts, June 29, 2011, pp.156-168, HQT's pleading.

Adverse Affects of Current Limited Coordination

368. While the discussion above regarding the need for coordinated planning is policy oriented without reference to actual circumstances, actual experience can illustrate the need for a coordinated and open process.
369. NLH has participated in a number of the processes identified by Mr. Rose as comprising the open planning process in Quebec, including : three investment files, the SIS process, the complaint process and HQT rate hearings.
370. Mr. Gilbert Bennett testified that from his perspective, *“none of those processes, either separately or in combination, provide a meaningful engagement in the early stages of the planning process.”*⁹⁸
371. He elaborated on these experiences. With respect to HQT claims regarding the inclusive nature of their processes, NLH notes that HQT contested all instances where NLH applied for intervener status in investment hearings before the Regie.
372. Also, Mr. Bennett testified that a planning system based on FERC's planning principles would have helped alleviate the problems experienced by NLH, and that adoption of such a planning process could greatly reduce the potential for after the fact disputes that are both time consuming and costly for all parties involved.⁹⁹
373. Such time delays in dispute hearing processes can be used as a competitive advantage and it is therefore essential to have upfront, participation in the planning process to avoid after the fact disputes.
374. Furthermore, Mr. Bennett testified from NLH's experience as a transmission customer that: *“HQT's planning processes do not meet the standard articulated in FERC Order 890, paragraph 471 that: “[the information sharing and consultation process] should enable customers, other stakeholders, or an independent third party to replicate the results of planning studies and thereby reduce the incidence of after the fact disputes regarding whether the planning has been conducted in an unduly discriminatory fashion.”*¹⁰⁰
375. Dr. Sinclair also testified on the adverse consequences experienced by NLH as a result of the lack of coordinated and open transmission planning in Quebec:

“In January 2006, NLH made a transmission service request for transmission long-term service from the proposed Lower Churchill project into Ontario, New England, New York, and New Brunswick. In the absence of transparency in HQT's planning process, NLH, with no guidance or insight from the transmission provider, had to request that a range of capacity bookings be studied. A more open and transparent planning process would have enabled NLH to make its transmission service request from a more informed perspective, rather than having to request specific detailed information during the system impact study

⁹⁸ Transcripts, May 2, 2011, p.23, Mr. Gilbert Bennett Examination by Mr. André Turmel.

⁹⁹ Transcripts, May 2, 2011, p.20-21, Mr. Gilbert Bennett Examination by Mr. André Turmel.

¹⁰⁰ Transcripts, May 2, 2011, p.29-30, Mr. Gilbert Bennett Examination by Mr. André Turmel.

itself. Furthermore, a more open planning process would allow the transmission customer to assess the results of the system impact studies more fully. NLH has been adversely affected by the absence of transparency and, as result, it elected to seek redress at the Régie in filing several complaints.

[Furthermore], NLH sought to intervene in the Régie investment proceeding (R-3696-2009), HQT initially objected. Among several objections, HQT stated:

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

ENGLISH TRANSLATION: HQT questions the added value of NLH in this filing given the absence of relevance with respect to the issues.¹⁰¹

376. This filing concerns an HQT investment of \$260 million on its entire network to solve major voltage issues affecting all HQT clients.
377. Such circumstances do not support HQT's assertion that the Régie processes for guiding transmission planning will provide customers the opportunity to have meaningful participation as envisioned in Order 890.

Recommendations

378. The Régie should require HQT to adhere to the requirements of Order 890 by establishing a coordinated, open, and transparent planning process. As described in more detail in the Order, this process should include, at least the following (see Order 890 paragraph 602):
- (i) the process for consulting with customers and neighboring transmission providers;
 - (ii) the notice procedures and anticipated frequency of meetings or planning related communications;
 - (iii) a written description of the methodology, criteria, and processes used to develop transmission plans;
 - (iv) the method of disclosure of transmission plans and related studies and the criteria, assumptions and data underlying those plans and studies;
 - (v) the obligations of and methods for customers to submit data to the transmission provider;
 - (vi) the dispute resolution process;

¹⁰¹ Exhibit C-13-24, Dr. Robert Sinclair Expert Report, pp.21-23.

- (vii) the transmission provider's study procedures for economic upgrades to address congestion or the integration of new resources; and
- (viii) the relevant cost allocation procedures or principles

iii) Attachment L – Creditworthiness Procedures

<p><u>ATTACHMENT L</u></p> <p><u>Creditworthiness Procedures</u></p> <p><u>1. GENERAL INFORMATION</u></p> <p><u>For the purpose of this Attachment L, a Customer shall mean a Network Customer, a Transmission Customer or any counterparty to a Connection Agreement pursuant to Section 12A. A Customer's creditworthiness must be evaluated prior to the execution of any service by the Transmission Provider. A credit review shall be conducted by the Transmission Provider, at least annually, for each Customer or upon reasonable request by the Customer. Information requested under this Attachment L should be forwarded to:</u></p> <p><u>Hydro-Québec TransÉnergie</u></p> <p><u>Marketing and Regulatory Affairs</u></p> <p><u>Creditworthiness Information</u></p> <p><u>Complexe Desjardins, Tour Est, 19e étage</u></p> <p><u>Montréal (Québec) H5B 1H7</u></p> <p><u>Phone: 514-879-6223 / Fax: 514-879-4685687-4266</u></p> <p><u>Email: Lalande.Marie-Claude@hydro.qc.ca</u></p> <p><u>Upon receipt of a Customer's information, the Transmission Provider will review it for completeness and will notify the Customer if additional information is required. For Customers not requiring Network Upgrades, upon completion of a credit evaluation, the Transmission Provider will submit a credit offer to the Customer. The credit offer will outline the credit conditions established for the Customer and will confirm whether or not the Customer is required to provide Financial Assurance in accordance with Section 5 of this Attachment L. The credit offer must be signed by the Customer, by its parent or affiliated company that the Transmission Provider accepts as guarantor for the Customer ("Guarantor"), if any, and by the Transmission Provider. Customers requiring Network Upgrades shall refer to Section 11 of this Attachment L.</u></p> <p><u>2. FINANCIAL INFORMATION</u></p> <p><u>In order to obtain an unsecured credit limit, the Customer must, without limitation, provide the Transmission Provider with the following:</u></p> <ul style="list-style-type: none"> <u>•All current rating agency reports from Moody's, Standard & Poor's ("S&P") and/or Dominion Bond Rating Service Ltd ("DBRS") of the Customer or of its Guarantor, if any;</u> <u>•Audited and consolidated annual financial statements from a global registered independent auditor for the three (3) most recent financial years, or the period of existence, if shorter, of the Customer or of its Guarantor, if any;</u> <u>•Unaudited consolidated financial statements for the most recent financial quarters with comparative results of the prior year's financial quarters of the Customer or of its Guarantor, if any;</u> <u>•Any reasonable information requested by the Transmission Provider in order to assess the creditworthiness of the Customer or of its Guarantor, if any.</u> <p><u>3. CREDITWORTHINESS REQUIREMENTS</u></p> <p><u>To be eligible for an unsecured credit limit, the Customer must, without limitation, meet the following minimum criteria based on the information provided in Section 2 of this Attachment L:</u></p>
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a) The Customer must have and maintain credit ratings, for its outstanding long-term senior unsecured and unsubordinated debt, of at least:

•Baa3 by Moody's; and/or

•BBB- by S&P; and/or

•BBB (low) by DBRS.

In the event of a split rating classification by Moody's, S&P and DBRS, the lowest of the ratings shall apply. If the Customer or its Guarantor, if any, does not have a long-term senior unsecured and unsubordinated credit rating, the long-term issuer credit rating will be considered.

In the event of a split rating classification by Moody's, S&P and DBRS, the lowest of the ratings shall apply. If the Customer or its Guarantor, if any, does not have a long-term senior unsecured and unsubordinated credit rating, the long-term issuer credit rating will be considered.

b) If the Customer relies on the creditworthiness of a Guarantor, then the relevant entity must meet the minimum criteria set out in (a) above and provide the information outlined in Section 2 of this Attachment L. The Guarantor must also provide a written guarantee, stating that it will be unconditionally responsible for all obligations associated with the Customer's receipt of any service from Transmission Provider. The guarantee must be in a form and for an amount acceptable to the Transmission Provider;

c) The credit ratings issued by the agencies shall reflect the intrinsic business, credit and financial strength of the Customer or its Guarantor, if any, without consideration to any implied support, from any parent or affiliated companies, which support is not binding contractually (hereafter "Implied Support"); excluding from assets and equity, any assets reflecting, at the discretion of the Transmission Provider, financial assistance to affiliated or parent companies not owned and controlled by the Customer or its Guarantor, as the case may be (hereafter "Financial Assistance"); but with consideration to any business, regulatory, or financial condition, risks, issues, adverse event or effect, occurring, pending or continuing, of any parent or affiliated companies, as well as those of the Customer or its Guarantor, if any, which affects or could adversely affect the financial condition of the Customer or its Guarantor, if any (hereafter "Contingent Risks"), (the combination of those elements is hereafter referred to as the "Intrinsic Credit Strength"). Otherwise, the Transmission Provider may, at its discretion, attempt to evaluate the Intrinsic Credit Strength of the Customer or its Guarantor, as the case may be, excluding the benefit, if any, of any Implied Support, deducting any Financial Assistance from assets and equity, and taking into consideration any Contingent Risks, and give precedence to this evaluation instead of the credit ratings provided by the rating agencies;

d) No change or effect shall have occurred, be pending or continuing, which could have a significant adverse effect on the financial condition of the Customer or its Guarantor, if any.

4. CREDIT LIMITS

If the Customer or its Guarantor, as applicable, meets the applicable criteria outlined in Section 3 of this Attachment L, the Customer may receive unsecured credit (hereafter "Credit Limit") of up to three (3) months of expected Transmission Service charge, based on the Customer's expressed needs. However, the Transmission Provider reserves its right to limit the amount of unsecured credit extended to a Customer. The Credit Limit shall not exceed the maximum unsecured credit limit, established internally and approved from time to time by the Board of Directors of Hydro-Québec, based on the credit risk level of the Customer or its Guarantor, as applicable. If the Customer requires credit beyond the Credit Limit extended by the Transmission Provider, then the Customer shall provide Financial Assurance, in accordance with Section 5 below, amounting to at least 133% of the excess in credit needs.

The Transmission Provider shall review Credit Limits periodically, at least annually, to reflect the Customers' needs, and upon any adverse change in the financial condition of the Customer or its Guarantor, if any, whether resulting in a credit rating downgrade or not. Any such change in Credit Limit shall be communicated in writing to the Customer and its Guarantor, if any, which written notice shall modify the terms and conditions of the credit offer accordingly and become effective five (5) business days following receipt of such written notice by the Customer.

5. FINANCIAL ASSURANCE

A Customer that does not meet the applicable requirements for creditworthiness set out in Section 3 of this Attachment L, or that elects to provide other forms of guarantee to establish its creditworthiness or that requires credit beyond its Credit Limit shall comply with one of the following:

(a) Provide security

For Short-Term Transmission Service, the Customer shall provide security, in a form described below, amounting to 133% of three (3) months of expected Transmission Service charge or 133% of the excess in credit needs, as the case may be. The security must be provided at least five (5) business days prior to the commencement of Transmission Service or upon the request for Transmission Service.

For Long-Term Firm Point-to-Point Transmission Service, the Transmission Provider may require the Customer to provide additional

security, for a reasonable amount, set in proportion to the value of the Transmission Service requested by the Customer.

(b) Pre-pay service

Customer shall pay the total charge of Transmission Service or 133% of the excess in credit needs, as the case may be, at least five (5) business days prior to the commencement of Transmission Service or upon the request for Transmission Service.

Security provided to the Transmission Provider in accordance with Section 5(a) above should be in the form of (altogether referred to as "Financial Assurance"):

(i) An unconditional and irrevocable standby letter of credit, which shall be and remain at the Transmission Provider's satisfaction, including, without limitation, any issuing, advising or confirming banks involved, as the case may be; or

(ii) Cash deposits; or

(iii) An alternative form of security acceptable to the Transmission Provider.

Financial Assurance shall remain at the satisfaction of the Transmission Provider; otherwise, the Transmission Provider may request additional or alternative Financial Assurance from the Customer. The Customer shall have three (3) business days following such notice to provide Financial Assurance acceptable to the Transmission Provider.

6. CONTESTING CREDITWORTHINESS DETERMINATION

A Customer that disagrees with the Transmission Provider's determination of its creditworthiness may submit a written request for re-evaluation. Such request shall provide additional information supporting the basis for the request. The Transmission Provider will review the request and the additional information, and respond to the request within ten (10) business days.

7. CHANGES IN CREDITWORTHINESS AND/OR FINANCIAL ASSURANCE REQUIREMENTS

Upon determination by the Transmission Provider that the creditworthiness and/or Financial Assurance requirements of the Customer, or its Guarantor, as applicable, have changed, the Transmission Provider shall confirm in writing the new requirements to the Customer and its Guarantor, if any. Such written notice shall modify the terms and conditions of the credit offer accordingly and become effective five (5) business days following receipt of such written notice by the Customer. Notwithstanding the foregoing, any Credit Limit excess or Financial Assurance deficiency, resulting or not from such new requirements, shall be remedied within three (3) business days following notice of such event.

8. ONGOING FINANCIAL REVIEW

Each Customer qualifying under Section 3 of this Attachment L is required to provide or render readily accessible through the Internet, without any cost, and within the delays specified in its respective credit offer, or upon request, the following:

• Most recent credit rating agency reports on the Customer or its Guarantor, if any;

• Most recent audited and consolidated annual financial statements from a global registered independent auditor of the Customer or its Guarantor, if any;

• Most recent unaudited consolidated quarterly financial statements with comparative results of the prior year's financial quarters of the Customer or its Guarantor, if any.

9. CHANGES TO THE CREDITWORTHINESS PROCEDURES

If the Transmission Provider intends to modify this Attachment L, the following process shall be followed:

(a) Notification to the Customer

Customers shall be notified by e-mail and courier that an amendment to Attachment L has been filed with the Régie. The notice shall include the proposed modifications to Attachment L, the expected effective date of the change and the delay to comply with the revised credit requirements.

(b) Customer's responsibility

The Customer must take the necessary steps to comply with the revised credit requirements by the effective date of the change, or notify promptly the Transmission Provider of its inability to comply with the revised credit requirements.

10. CUSTOMER DEFAULT

Any failure or omission by the Customer to meet the Transmission Provider's credit conditions, provide required information or provide and maintain in effect Financial Assurance under this Attachment L or any other supplementary agreements, including, without limitation, the credit offer, the Connection Agreement or any Service Agreement for Transmission Service, as applicable, (hereafter "Supplementary Agreements") is considered a default. In the event that a Customer defaults pursuant to this Attachment L, to Section 7.3, or to any other Supplementary Agreements, the Transmission Provider shall send a written notice to the Customer. If the default is not remedied within three (3) business days, the Transmission Provider has the right to name a date at which it intends to terminate any service or agreement binding the Parties. The Transmission Provider shall then calculate all amounts due, including repayment for all amounts incurred and accrued along with interest on any unpaid amounts, calculated pursuant to Section 7.2, and shall notify the Customer of the net amount then owing.

11. NETWORK UPGRADES

In addition to the terms and conditions of this Attachment L, the Transmission Provider has defined specific credit conditions applicable to the following Customers requiring Network Upgrades:

- Transmission Customers requesting Long-Term Firm Point-to-Point Transmission Service which requires Network Upgrades;
- Any counterparty to a Connection Agreement, in accordance with Section 12A.

11.1 General Information

Customers requiring Network Upgrades shall provide the information specified in Section 2 of this Attachment L. Upon completion of a credit evaluation, the Transmission Provider shall confirm whether or not the Customer requiring Network Upgrades is required to provide Financial Assurance in accordance with Section 11.3 below. The credit conditions established for the Customer requiring Network Upgrades will be incorporated in the Service Agreement for Firm Long-Term Point-to-Point Transmission Service or in the Connection Agreement, as applicable.

11.2 Credit Limits

If the Customer requiring Network Upgrades or its Guarantor, if any, meets the applicable criteria outlined in Section 3 of this Attachment L, such Customer may receive a Credit Limit of an amount equivalent up to the total estimated charges to be incurred by the Transmission Provider for Network Upgrades. However, the Transmission Provider reserves its right to limit the amount of unsecured credit extended to a Customer requiring Network Upgrades. The Credit Limit shall not exceed the maximum unsecured credit limit, established internally and approved from time to time by the Board of Directors of Hydro-Québec, based on the credit risk level of such Customer or its Guarantor, as applicable. If such Customer requires credit beyond the Credit Limit extended by the Transmission Provider, then the Customer shall provide Financial Assurance, in accordance with Section 11.3 below.

The Transmission Provider shall review Credit Limits periodically, at least annually, to reflect the risk profile of the Customer requiring Network Upgrades or the risk profile of its Guarantor, if any, and upon any adverse change in the financial condition of such Customer or its Guarantor, if any, whether resulting in a credit rating downgrade or not. Any such change in Credit Limit shall be communicated in writing to such Customer and its Guarantor, if any, which written notice shall modify accordingly the terms and conditions of the Service Agreement for Firm Long-Term Point-to-Point Transmission Service or the Connection Agreement, as applicable, and become effective five (5) business days following receipt of such written notice by the Customer.

11.3 Financial Assurance

A Customer requiring Network Upgrades that does not meet the applicable requirements for creditworthiness set out in Section 3 of this Attachment L, or that elects to provide other forms of guarantee to establish its creditworthiness or that requires credit beyond its Credit Limit shall provide an unconditional and irrevocable standby letter of credit to secure the estimated charges to be incurred by the Transmission Provider for Network Upgrades. The letter of credit shall be and remain at the Transmission Provider's satisfaction at all times, including, without limitation, the designation of any issuing, advising or confirming banks involved, as the case may be.

Financial Assurance shall remain at the satisfaction of the Transmission Provider; otherwise, the Transmission Provider may request additional or alternative Financial Assurance from the Customer requiring Network Upgrades. Such Customer shall have three (3) business days following such notice to provide Financial Assurance acceptable to the Transmission Provider.

11.4 Changes in Customer's Financial Condition

Upon determination by the Transmission Provider that the creditworthiness and/or the Financial Assurance requirements of the Customer requiring Network Upgrades, or its Guarantor, as applicable, have changed, the Transmission Provider shall confirm in writing the new requirements to the Customer and its Guarantor, if any. Such written notice shall modify accordingly the terms and conditions of the Service Agreement for Firm Long-Term Point-to-Point Transmission Service or the Connection Agreement, as applicable, and become effective five (5) business days following receipt of such written notice by the Customer. Notwithstanding the foregoing, any Credit limit excess or Financial Assurance deficiency, resulting or not from such new requirements, shall be remedied within three (3) business days following notice of such event.

12. DIVISIONS OF HYDRO-QUÉBEC

The Distributor and the Generator, like the Transmission Provider, are divisions of Hydro-Quebec. For that reason, the Distributor and the Generator are not subject to this Attachment L.

379. With respect to HQT reviewing and adjusting customer credit limits HQT should be required to limit the exercise of this right to circumstances of material adverse change affecting the risk of non-payment by the customer. HQT should establish clear criteria for how this would be done. It should be linked to the original criteria used to establish such limits.
380. A procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements should be added to Attachment L.¹⁰²

Montréal, July 5, 2011

(s) Fasken Martineau DuMoulin

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Attorneys for the Intervener NLH

Certified Copy

¹⁰² Exhibit C-13-24, Robert Sinclair Expert Report, pp. 32-34.