

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o : R-3757-2011

RÉGIE DE L'ÉNERGIE

HYDRO-QUÉBEC TRANSÉNERGIE

(hereinafter « HQT »)

Applicant

ET

NEWFOUNDLAND AND LABRADOR HYDRO,
Hydro Place, 500 Columbus Drive P.O. Box 12400,
St-John's, Newfoundland A1B 4K7 (hereinafter
« NLH »)

Intervener

**Observations of NLH on HQT's Application to obtain the required permission for the acquisition and construction of buildings or assets for transmission of electricity – Transmission Provider's Project on connecting La Romaine Complex to the transmission system.
(R-3757-2011)**

Investment authorization request for La Romaine; file R-3757-2011

Two issues exist in this file that brings us to recommend to the Régie to reject granting the authorization requested:

- The request for authorization appears premature. The request filed by Hydro-Québec TransÉnergie (HQT) states that an alternative to the proposed investment is under study¹. We are told that these studies will be completed by summer 2012². Therefore, it appears reasonable to wait for the results of these studies before authorizing the investment.
- The request is also incomplete because of the absence of a specific transmission service agreement.

¹ HQT-1, Document 1, page 35, lines 9 to 26.

² HQT-2, Document 3 page 4 lines 21-31 and HQT-2 Document 1 page 3, lines 15-24.
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Request is Premature

The present request appears to be premature at this stage. HQT stated that it is in the process of completing studies on a path that could be used in replacement of the proposed path in the present investment file³.

In the answers provided by HQT pertaining to the existence of on-going studies for the construction of a line linking the North East region of Québec to Montréal, we are told that these studies will be completed in summer 2012⁴.

As stated in the Attachment D of the Open Access Transmission Tariff (OATT), where the methodology for completing a System Impact Study is described, the transmission provider must develop for review the least-cost transmission expansion plan.

In this file the Régie has not been provided with the assurance that the least-cost solution is the one being presented.

Moreover, in answer to NLH information request 2.3, HQT also stated that certain costs attributable to the customer are still unknown⁵.

Considering that all the costs have not been properly identified and that no assurance exists that the proposed project is the "least cost solution", it appears reasonable to withhold the authorization until HQT has met its obligation under the OATT and under article 73 of the *Loi sur la Régie de l'énergie* (L.R.Q. c. R-6.01).

Application of Section 12A.2

The principle issue in the authorization request presented by HQT is the lack of a specific transmission service agreement. The delivery of production from the Romaine facility will necessitate that either Point-to-Point transmission service or Native-Load transmission service be used for this function. The magnitude of each transmission service type will be dependent upon the capacity that is designated at the Romaine plant for Native load use. In effect, article 26 of the Connection Agreement executed between HQ and HQT and filed as "Annexe 1"⁶ does not include the required reference to a specific and executed transmission service agreement. At the face of the document it appears that the production from the La Romaine complex will be sunk in Québec. No sales to the load exist and no Point-to-Point service appears in the evidence as required by Section 12A of the OATT. As a result it appears that the facility has been designated as a resource to serve Native Load and that firm Point to Point transmission service will not be required for export purposes.

The rule of 12A

The principle underpinning article 12A is that a market participant is required to purchase transmission service in order to provide additional revenues to HQT to offset the additional costs created by the connection project.

³ HQT-1, document 1 page 35 lines 9-16.

⁴ HQT-2, Document 3 page 4.

⁵ HQT-2, Document 3 page 6 lines 3-6.

⁶ HQT-1, Document 1, Annexe 1, Entente de raccordement pour l'intégration de centrales au réseau de transport. DM_MTL/118243-00005/2565444.1

In the decisions D-2006-66 and D-2007-08 the Régie established the rules for the connection of a new generating plant:

In D-2006-66 the Régie declared:

"L'objectif de l'article 12A.2 est d'assurer que tout nouveau raccordement de centrale génère des revenus additionnels qui permettent de couvrir les coûts qui y sont associés⁷."

In D-2007-08 the Régie brings a further precision as it adopts modifications to the text of Section 12A:

"La Régie se prononce ci-après sur les modifications proposées par le Transporteur, à la lumière de la décision D-2006-66 où elle mentionnait :

« L'objectif de l'article 12A.2 est d'assurer que tout nouveau raccordement génère des revenus additionnels qui permettent de couvrir les coûts qui y sont associés. Cet objectif est assuré par la neutralité tarifaire dont les modalités s'adaptent aux circonstances particulières de chaque projet».(...)

Selon la Régie, l'utilisation de plusieurs conventions est acceptable s'il est démontré que **chacune de ces conventions amène des revenus additionnels** au Transporteur et que l'ensemble des revenus additionnels permet de couvrir les coûts additionnels associés au projet.

Par ailleurs, la Régie maintient le concept de signature d'une convention. En conséquence, elle retient en lieu du texte proposé, le texte suivant :

« Au moins une convention de service doit avoir été signée pour le service de transport ferme de long terme ».⁸ (We underlined).

Two elements must be present for the test of 12A to be met: (1) a transmission service agreement must be executed⁹; (2) additional revenues must stem from the transmission service agreement(s).

The Absence of a Transmission Service Agreement

HQT proposes to the Régie that HQ has acquired the necessary transmission service even if the connection agreement executed by HQ does not state this fact. Section 26 of the connection agreement filed in this case only states that HQ elects to proceed in application of sub section 12A.2(i):

⁷ D-2006-66 page 36.

⁸ D-2007-08 pages 71 and 73; see also the Toulmoustou connection case R-3497-2002.

⁹ HQT had proposed the word "convened" and the Régie made certain to eliminate any ambiguity by ordering the use of the word "execute".

“Conformément au paragraphe 6.1e), le **Producteur** se prévaut de l’engagement prévu au paragraphe i) de l’article 12A.2 des Tarifs et Conditions”

This does not meet the requirement of the OATT, where it is stated explicitly that the mere execution of a Connection Agreement does not constitute a reservation for transmission service¹⁰.

As stated earlier, either Point to Point or Native Load transmission service is required for connecting the facility. In the case of Point to Point service HQ did not provide a Transmission Service Agreement in support of the allegation that it has effectively purchased point to point service as required under Section 12A.2 (i). The only element of evidence on file is a statement made by HQT to the effect that existing Transmission Service Agreements on the paths HQT-ON, HQT-MASS and HQT-NE, as per Section 13.7 of the OATT, are the service agreements that will be used by HQ¹¹.

There is nothing on file stemming from HQ, only a statement made after the fact by HQT; whereby HQT indicates that Transmission Service Agreements exist and that the revenues from these existing transactions cover the costs of the integration of the new power plants of the complex of La Romaine¹².

The Use of Existing Transmission Service Agreements

HQT declares that HQ will use existing transmission agreements due to the lack of information at article 26 of the Connection Agreement as to where the electricity produced at La Romaine will ultimately be delivered (point of delivery “POD”). HQ did not declare if the existing agreements to be used are Point to Point or Native Load service arrangements.

This creates a certain difficulty. In effect, at the time where these existing transmission service agreements were requested by HQ the point of receipt (POR) that was not specifically identified but described as the HQ system, the La Romaine complex was not part of the HQ system.

In effect, looking at the impact studies carried out by HQT as posted on OASIS we see that the most recent filing by HQ for the La Romaine complex dates of May 2006. Therefore, the final impact study was queued after the request made for the export paths to New York and New England dated January 2006¹³.

In relation to the use of the existing Point to Point service agreements for export purposes, the POR for the transmission requests to NY and NE are not the same now as they were when the transmission service was granted in 2006, under Section 13.7 of the OATT. HQT is stating that HQ is in effect modifying the POR associated with those service agreements, by claiming that HQ will use those existing transmission service agreements. In other words, HQT is stating that HQ has requested a modification to the existing transmission service.

The OATT allows for modifications to transmission service agreements at Section 22.2 for firm service:

¹⁰ Section 12A.1 *in fine*.

¹¹ See the answer provided to Question 2.2 of the NLH information request, HQT-2, Document 3 page 5 and HQT-2 Document 1 pages 20-21.

¹² HQT-2, Document 1 page 21 lines 11-13

¹³ See HQT OASIS under the heading « Impact Studies »; study 75, column entitled « Service request » : service de la Romaine de 2014 à 2020 Selon modification par HQT le 25 mai 2006
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“Any request by a Transmission Customer to modify Points of Receipt or Delivery on a firm basis shall be treated as a new service request in accordance with Section 17 herein (...)”

Therefore, it is possible to modify an existing transmission service agreement, but such a modification must be treated as a new request and this may trigger the possibility of having to carry out an impact study (Sections 15.2 and 17.5 OATT).

In the Attachment C, describing the methodology for assessing the available transmission capability, we find that the Transmission Provider establishes the Available Transmission Capability (ATC) by taking into account the transmission service for the native load, the existing contracts under which Transmission Service is provided; and the existing accepted or queued valid Applications for Transmission Service.

Considering this methodology we see that in the context of a modification to an existing Transmission Service, HQT must make an assessment in application of Sections 17 and 19 to determine if an impact study is required. To do so it has to establish the ATC on the requested path(s) taking into account that an additional 1,550MW coming from the La Romaine complex is to transit on the existing transmission reservations onto ON, MASS and NE.

System studies have to first be conducted to prove that the energy from Romaine can be ‘collected’ at the HQT hub before being exported. The fact that system upgrades are required to remove congestion at or around the HQT point indicates that the existing Transmission Service Agreements are not suitable and must be modified. To permit these studies to be conducted Romaine has to be identified as a POR, without identifying the POR it is not possible to identify which lines will be delivering the energy and which lines will require the upgrades.

What HQT proposes to do in this instance is to modify the existing Transmission Service Agreements by adding ‘Romaine’ to the list of established POR(S) that can be collected at the “HQT Point” for subsequent export.

In the discussion pertaining to the adoption of the text of 12A in its decision D-2006-66 the Régie identified the possibility for a market participant to modify an existing transmission reservation that the said market participant would use anyway, thus in the opinion of the Régie not providing to HQT the additional revenues sought to be generated to compensate for the new costs:

“Un producteur qui possède déjà des conventions de service de point à point fermes de long terme pourrait ne pas renouveler une réservation existante et utiliser sa nouvelle réservation pour faire ses transactions qu’il ferait de toute façon. Cette opération est réalisable en vertu de l’article 22.1 des Tarifs et conditions”¹⁴.

Considering this possibility the Régie concluded that the proposed text for Sub-Section 12A.2(i) was acceptable as long as additional revenues are created:

“Concernant la première option, elle est adéquate dans la mesure où l’engagement ferme de long terme conclu avec le

producteur génère des revenus additionnels sur une période suffisante pour assurer la neutralité tarifaire du projet.”¹⁵

One may argue that the Régie has accepted in the past the use of a modified transmission service agreement to meet the requirement of 12A.2(i). The case is the integration of the Eastmain 1A/Sarcelle power plants (R-3674-2008).

Here HQT proposed to accept the use of a Transmission Service Agreement executed in October 2006 to connect the power plants Eastmain 1A and Sarcelle expected to be completed in 2012.

The interconnection HQT-ON is a new interconnection, thus not being used by existing generation. In the Eastmain case, we have a situation where new generation is using new transmission. This is not the same situation as what we have here with La Romaine. Therefore, the Eastmain 1-A/Sarcelle precedent is not applicable in the present case.

At this point it is important for HQ to make available the system studies which identified the upgrades which are required to the HQT system. These studies will indicate if the upgrades requested are for Native Load use, which will properly allocate those costs to the domestic rate payer, or if the upgrades requested are for export use thus requiring an impact study on the identified paths and missing in the file.

Considering the lack of evidence filed by HQT as far as transmission service is concerned in application of Section 12A.2; considering that section 22 OATT must be followed when one modifies a transmission service agreement; and considering that no evidence has been provided to support the allegation that the existing transmission service agreements can accommodate the transit of a new 1 550MW of production; it appears reasonable for the Régie to reject the requested approval.

Approving such request filed by HQT would be against OATT rules and previous Régie's decisions.

The Absence of Additional Revenues

The underlying logic of article 12A has been very clearly stated by the Régie. It consists in matching new costs with new revenues. As quoted earlier the Régie states that the transmission agreements must generate additional revenues:

“Selon la Régie, l'utilisation de plusieurs conventions est acceptable s'il est démontré que **chacune de ces conventions amène des revenus additionnels** au Transporteur et que l'ensemble des revenus additionnels permet de couvrir les coûts additionnels associés au projet.”¹⁶ (Our emphasis).

The use of existing transmission agreements does not appear to meet the requirement established by the Régie. Existing transmission service agreement(s), either Point to Point or Native Load service, provides existing revenues, since one has to pay regardless of the scheduling made under those agreements. Thus, by allowing the use of existing transmission agreements, it appears that HQT may be enabling HQ to transfer a cost onto the rate payer without obtaining additional revenues. This situation can be cleared up if the working papers for the plants integration are made available. Those papers will show weather the

¹⁵ Id page 37.

¹⁶ D-2007-08 pages 71-73.
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existing Native Load Transmission Service is being used to deliver energy to Quebec Native Load, or if Point-to-Point exports are benefiting from upgrades being taken to interconnect a new facility to the existing Point to Point service arrangement.

This seems to contradict the regulatory framework based on HQT OATT and previous Régie de l'énergie's decisions. These transmission service acquisitions help reduce the burden of the local rate payer. By transferring these existing revenues onto new costs no new revenues are created. On the contrary, the money collected by HQT remains constant and moreover, the rate payer also absorbs the cost borne by HQT in virtue of Attachment J. One cannot consider existing transmission agreements as "banked" money that can be drawn on to absorb new costs. This invalidates the very reason and principle of Article 12A.

The revenues from these existing transmission service agreements do not cover the cost of the service to deliver energy from Romaine. Transmission upgrade costs include an upfront capital contribution and an annual scheduled fee. The up front capital costs for La Romaine were not included in the initial capital investment component of the analyses.

Conclusion

The use of existing transmission service agreement(s) for the production stemming from a new power plant necessarily implies that the POR of the existing Native Load and Point to Point service agreements be modified. If the system upgrades are being used for export purposes than Section 22 of the OATT must be followed and such a proposition considered as being a new reservation. As such the transmission provider must determine if an impact study will be required to provide the service. No evidence exists on file demonstrating that this process has been followed.

Considering the lack of clarity around which of the appropriate transmission service agreements is benefitting from the upgrades at the face of the file; considering the lack of confirmation provided by HQ (as opposed to HQT) that existing transmission service agreements will be used; and considering the pending studies on an alternate scenario due summer 2012; it appears that HQT is not necessarily presenting the least cost system expansion and that the requirements of Section 12A have not been met.

The lack of clarity pertaining to the reason for the upgrades has the potential to transfer costs that should be borne by a market participant onto the rate payers. There are no additional revenues generated, as required by the Régie and existing revenues are used to absorb new costs.

Therefore, we ask the Régie to reject the request for authorization for the investments required to connect the La Romaine complex as filed.