

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

RÉGIE DE L'ÉNERGIE

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HYDRO-QUÉBEC, legal person constituted by the *Hydro-Québec Act*, RSQ c H-5, having its head office at 75 René-Lévesque Boulevard West, Montréal, Province of Québec, H2Z 1A4

Applicant

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AFFIDAVIT OF CRAIG MARTIN,  
TRANSCANADA ENERGY LTD.

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## I. INTRODUCTION

1. I am the Director, Eastern Portfolio Optimization of TransCanada Energy Ltd. ("TCE"), which has a business establishment at 200 Bay Street, Suite 2400, Toronto, Ontario, M5J 2J1.
2. On June 10, 2003, TCE signed an *Electricity Supply Contract* (the "ESC") with Hydro-Québec Distribution ("HQD") for TCE's Bécancour power plant (the "*power plant*") pursuant to HQD's call for tenders number A/O 2002-01.
3. I have personal knowledge of TCE's administration of the ESC.
4. On October 30, 2007 and November 30, 2007 respectively, HQD and TCE executed the *Memorandum of Agreement Respecting the Temporary Suspension of Electricity Production at the Bécancour Generating Station* (the "**Memorandum**") and the *Final Agreement* (the "**Final Agreement**") in that regard.
5. On June 29, 2009, TCE and HQD signed an *Agreement Respecting the Temporary Suspension of Electricity Production at the Bécancour Generating Station of TCE* (the "**Agreement**").
6. The Agreement is the renewal, with a few adjustments, of the Memorandum and the Final Agreement, and the extension of the *power plant* suspension for the year 2010.
7. On December 20, 2013, TCE and HQD signed an *Amendment Agreement* (the "**Amendment**") pursuant to which certain amendments were made to the Agreement to extend the suspension of the *power plant* until December 31, 2017 and reduce the annual compensation HQD pays to TCE under the Agreement relating to the unutilized firm transportation that is held by TCE under a transmission contract with TransCanada PipeLines Limited (the "**TCPL Contract**") in regards to the *power plant*.

8. I am one of a limited group at TCE who participated in the negotiation of the Amendment with HQD.
9. TCE respectfully asks the Régie de l'énergie (the "**Régie**") to maintain the confidential treatment of certain information contained in the Amendment<sup>1</sup>, in respect of which HQD is applying for approval from the Régie in this file, and to render an order prohibiting the disclosure, publication and release of that information, the whole in accordance with the Régie's Decisions D-2003-146, D-2007-127, D-2008-106, D-2009-125, D-2010-151, D-2011-144, D-2012-119 and D-2013-148.

## II. BACKGROUND

10. On June 10, 2003, HQD and TCE entered into the ESC<sup>2</sup>, which was subsequently approved by the Régie in file R-3515-2003 (D-2003-159).
11. In connection with the said file R-3515-2003, TCE asked that certain information contained in the ESC be treated confidentially. After a three-day hearing, the Régie ordered the confidential treatment of certain provisions of the ESC (D-2003-146):
  - Section 16.1 (Amount for capacity);
  - Section 16.1.1 (Nominal price for capacity);
  - Section 16.1.2 (Capacity price formula);
  - Section 16.2 (Price for eligible energy);
  - Section 16.3 (Amount for energy made available);
  - Section 16.7 (Heat rate mentioned in paragraph (a));
  - Section 16.8 (Deliveries associated with additional capacity); and
  - Appendix VI (Components of Electricity Price Formula).
12. On November 2, 2007, HQD applied to the Régie in file R-3649-2007 for approval of the Memorandum<sup>3</sup> and the Final Agreement<sup>4</sup>.
13. In connection with said file R-3649-2007, TCE asked that certain information contained in the Memorandum and the Final Agreement be treated confidentially<sup>5</sup>.
14. On November 12, 2007, the Régie granted in its Decision D-2007-127 the request for confidential treatment in connection with the following documents:

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<sup>1</sup> HQD-1, Document 1 (redacted version of the Amendment filed in HQD's application).

<sup>2</sup> R-3515-2003: HQD-1, Document 3.

<sup>3</sup> R-3649-2007: HQD-1, Document 1.

<sup>4</sup> R-3649-2007: HQD-1, Document 3.

<sup>5</sup> R-3649-2007: C-6.2 and C-6.3.

As regards the ESC:

- The content of Sections 16.1, 16.2, 16.3 and 16.8 and the heat rate value mentioned in paragraph 16.7(a);
- The content of Appendix VI (Components of Electricity Price Formula).

As regards the Memorandum:

- Section 15 (Capacity payment);
- Sections 16 and 17 (Energy payment);
- Sections 18 to 21 (Replacement steam production);
- Section 23 (Credit granted to HQD by TCE for unutilized firm transportation on the TCPL system in regards to the *power plant*);
- Paragraphs 26(b), (c) and (e) (Reimbursement of increase in Gaz Métro distribution tariff);
- Section 28 (Substitution rights);
- Section 30 (Lay-up and re-commissioning costs for the *power plant*).

15. On December 7, 2007, the Régie approved the Memorandum and the Final Agreement (D-2007-134).
16. On May 30, 2008, the Régie maintained that confidentiality order in connection with an application for revocation relating to Decisions D-2007-127 and D-2007-134<sup>6</sup>.
17. On July 4, 2008, HQD applied to the Régie in file R-3673-2008 for approval of the extension of the temporary suspension of electricity production at the *power plant* for 2009, in accordance with the pertinent option stipulated in the Final Agreement.
18. In connection with said file R-3673-2008, TCE requested that confidentiality of the information covered by the Decision D-2007-127 be maintained<sup>7</sup>.
19. On August 15, 2008, after soliciting and receiving representations from interested parties, the Régie granted the request for confidential treatment of the information covered by its Decision D-2007-127 (D-2008-106).
20. On September 10, 2008, the Régie approved the suspension of the *power plant* for the year 2009 (D-2008-114).

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<sup>6</sup> R-3658-2008: D-2008-062, Reasons, pages 5 to 14.

<sup>7</sup> R-3673-2008: C-3.1, C-3.3 and C-3.5.

21. On July 2, 2009, HQD applied to the Régie in file R-3704-2009 for approval of the Agreement and the suspension of the *power plant* for the year 2010.
22. In connection with said file R-3704-2009, TCE asked that certain information contained in the Agreement be treated confidentially<sup>8</sup>.
23. On October 8, 2009, the Régie approved in its Decision D-2009-125 the suspension of the *power plant* for the year 2010 and granted the request for confidential treatment in connection with the following information contained in the Agreement:
- Section 13 (Continued Capacity Payment);
  - Sections 14 to 16 (Energy Payment);
  - Sections 18, 19 and 21 (Replacement Steam Production);
  - Section 24 (Credit granted to HQD by TCE for unutilized firm transportation on the TCPL system in regards to the *power plant*);
  - Section 26 (Reimbursement of increase in Gaz Métro distribution tariff);
  - Section 29 (Substitution Rights);
  - Sections 32 and 34 to 36 (Lay-Up and Re-commissioning Costs);
  - Schedule 3, Section 1 (ESC provisions to be adjusted after the re-commissioning period);
  - Schedule 3, Sections 2 to 4 (ESC provisions to be adjusted after the re-commissioning period).
24. On June 15, 2010 (R-3734-2010), June 10, 2011 (R-3765-2011), June 14, 2012 (R-3803-2012) and June 14, 2013 (R-3850-2013), HQD applied to the Régie for approval of the extension of the temporary suspension of electricity production at the *power plant* for the years 2011, 2012, 2013 and 2014, respectively, in accordance with the pertinent option stipulated in the Agreement.
25. The Régie approved the suspension of the *power plant* for the years 2011, 2012, 2013 and 2014 in its Decisions D-2010-109, D-2011-110, D-2012-118 and D-2013-129, respectively.
26. Furthermore, in connection with the tariff application filed by HQD in file R-3740-2010, the Régie requested from HQD<sup>9</sup> that it provides the projected cost of each of the post-heritage supply contracts for the years 2009, 2010 and 2011 (which includes the cost of the ESC) as well as the details of the indemnity paid to TCE under sections 25

<sup>8</sup> R-3704-2009 : HQD-2, Document 1 and C-1.1.

<sup>9</sup> R-3740-2010: (A-4) *Demande de renseignements no. 1 de la Régie*, Question 22, pages 22-23.

and 26 of the Finale Agreement as a result of the modifications to the Gaz Métro distribution tariff.

27. On December 3, 2010, after receiving representations from interested parties, the Régie granted the request for confidential treatment of this information (D-2010-151).
28. Finally, in connection with the tariff applications filed by HQD in files R-3776-2011, R-3814-2012 and R-3854-2013, HQD provided the projected cost of each of the post-heritage supply contracts for the years 2010 to 2014, inclusively (which includes the cost of the ESC). The Régie granted the request for confidential treatment of this information in its Decisions D-2011-144, D-2012-119 and D-2013-148.

### III. PURPOSE OF THIS REQUEST FOR CONFIDENTIALITY

29. In accordance with the prior decisions on this matter, TCE hereby respectfully requests that the Régie order the confidential treatment, protection and non-disclosure to anyone, other than the Régie, of certain information contained in the following provisions of the Amendment, as indicated in the redacted version of the Amendment filed in this file by HQD<sup>10</sup>:

- Preamble, Paragraph E (Volume of unutilized firm transportation on the TCPL system in regards to the *power plant* (the "**Unutilized Transportation**"));
- Part B, Section 24 of the Agreement as amended (Volumes of firm transportation and Unutilized Transportation; credit granted to HQD by TCE for Unutilized Transportation and details of the formula; use by TCE of all or part of the Unutilized Transportation and credit granted to HQD by TCE in connection thereof);
- Part C, Article I, Section 1 (Potential use by TCE of all or part of the Unutilized Transportation and date related to the exercise of the Supplier's Option);
- Part C, Article I, Section 2 (Date related to the exercise of the Supplier's Option);
- Part C, Article II, Paragraph 1(b) (Date related to the Payment Relief Date);
- Part C, Article II, Paragraph 2(b) (Volume of Unutilized Transportation);
- Part C, Article III, Section 2 (Provision regarding the extension or renewal of the TCPL Contract for the Steam Transport);
- Part C, Article III, Section 4 (Provision regarding New Transmission Arrangements).

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<sup>10</sup> See HQD-1, Document 1 (redacted version of the Amendment).

#### IV. REASONS FOR TCE'S CONFIDENTIALITY REQUEST

30. The information referred to in paragraph 29 of this affidavit for which TCE requests non-disclosure is confidential financial, business and technical information which TCE usually treats confidentially. TCE continues to treat all this information as confidential.
31. The disclosure of this information would conflict with the Régie's Decisions D-2003-146, D-2007-127, D-2008-106, D-2009-125, D-2010-151, D-2011-144, D-2012-119 and D-2013-148 (the "**Decisions**") and would cause the prejudice already evidenced in the files related to these Decisions.
32. More specifically, under sections 45 to 48 of the Agreement, all the information referred to in paragraph 29 of this affidavit for which TCE requests non-disclosure is defined as "Confidential Information", the disclosure or release of which is prohibited.
33. This information shows TCE's project development strategy, its business and operating strategies and its price and cost structures. Its disclosure would cause TCE prejudice, would provide its competitors and marketers with an advantage and could undermine its competitiveness.
34. More specifically, the information contained in Part B of the Amendment, referring to the amended Section 24 of the Agreement, for which TCE is requesting non-disclosure, provides the volume of firm transportation for the *power plant and Unutilized Transportation*. It also provides a reference to the potential use by TCE of the Unutilized Transportation as well as the amount of the credit to be paid to HQD with regards to the Unutilized Transportation, including the formula to calculate this credit. Such disclosure would therefore give TCE's competitors and marketers an advantage namely for pricing gas and the economic model used by TCE and would undermine its competitiveness in respect of the *power plant* and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of this information.
35. The information contained in Part C, Article I of the Amendment for which TCE is requesting non-disclosure deals with the timing of the Supplier's Option and the potential use by TCE of the Unutilized Transportation. Disclosure of this information would give TCE's competitors and other potential clients an idea of its project development strategy and potential use of the Unutilized Transportation. Such disclosure would therefore give TCE's competitors and marketers an advantage and would undermine its competitiveness in respect of the *power plant* and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of this information.
36. The information contained in Part C, Article II of the Amendment for which TCE is requesting non-disclosure deals with the timing of the Payment Relief Date. Disclosure of this information would give TCE's competitors and other potential clients an idea of its project development strategy and the volume of Unutilized Transportation. Such disclosure would therefore give TCE's competitors an advantage and would undermine its competitiveness in respect of the *power plant* and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of this information.

- 37. The information contained in Part C, Article III of the Amendment for which TCE is requesting non-disclosure deals with the renewal of the TCPL Transport and resumption of the *power plant*. Disclosure of this information would give TCE's competitors and other potential clients an idea of its project development strategy and price and cost structures. Such disclosure would therefore give TCE's competitors an advantage and would undermine its competitiveness in respect of the *power plant* and other projects. The Régie, by its Decisions referred to above, has already prohibited the disclosure, publication and release of this information.
- 38. For all these reasons, TCE asks the Régie to (i) **GRANT** the present request for confidentiality, (ii) **ORDER** the confidential treatment of the information, particulars and documents mentioned in paragraph 29 of this affidavit, and (iii) **RENDER** an order prohibiting the disclosure, publication and release of that said information, particulars and documents.
- 39. I sign this affidavit in support of the application by HQD to obtain a confidentiality order prohibiting the disclosure, publication and dissemination of such information mentioned in paragraph 29 of this affidavit.
- 40. TCE remains at the Régie's disposal to answer, *in camera*, as the case may be, any questions the Régie might have in this regard.
- 41. All of the facts alleged in the said confidentiality request are accurate.

AND I HAVE SIGNED



CRAIG MARTIN

Solemnly affirmed before me  
in Westborough, Massachusetts, U.S.A.,  
this 17<sup>th</sup> day of January 2014

 1/17/14

Notary Public

