ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

H.Q. Energy Services (U.S.), Inc.	)	Docket No. ER97-851-000

RESPONSE OF HYDRO-QUÉBEC
ENERGY SERVICES (U.S.) INC.
TO MOTIONS TO INTERVENE AND PROTEST

I. Procedural Matters

On December 18, 1996, H.Q. Energy Services (U.S.) Inc. ("HQUS") filed a petition with the Commission for an Order Accepting Initial Rate Schedule, Authorizing Market-Based Rates and Granting Certain Waivers and Blanket Approvals ("Application"). By notice dated January 2, 1997, the Commission invited interested parties to intervene or protest HQUS' Application on or before January 15, 1997. Timely motions were filed by: Electric Clearing House, Inc. ("ECI"), New York State Electric & Gas ("NYSE&G"), Enron Power Marketing, Inc. ("Enron"), Newfoundland and Labrador Hydro ("NFLH"), Plum Street Energy Marketing, Inc. ("Plum Street") and Niagara Mohawk Power Corporation ("NiMo").

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Several entities filed protests or interventions out of time: The Grand Council of the Crees (of Québec) and the New England Coalition for Energy Efficiency and the Environment (collectively, "Crees") on January 17, 1997, filed a motion seeking waiver of the deadline to file comments and intervene; Central Vermont Public Service Corporation ("CVPS"), TransCanada Energy Limited ("TCE"), Indeck Capital, Inc., Indeck Energy Services ("Indeck"), and Vermont Public Power System Authority ("VPPSA") filed motions for leave to intervene out-of-time. On February 4, 1997, the Utility-Trade Corp. filed a notice of intervention which specified neither the reason for the delay nor its position on the Application. As of the date hereof, the Commission has not acted on these motions.[1]

On January 17, 1997, HQUS requested that the Commission suspend its consideration of the December 18, 1996 Application. On March 11, 1997, HQUS filed a supplemental petition together with revised transmission tariffs of HQUS' affiliate, Hydro-Quebec, and certain revised exhibits amending its Application ("Supplemental Petition").[2] By notice dated March 14, 1997, the

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[1]HQUS notes that none of the HQ's large US customers, such as New York Power Authority, New England Power Pool or Consolidated Edison, have intervened or protested HQUS' request

[2]Unless otherwise indicated, capitalized terms used herein have the meaning assigned to them in the Supplemental Petition.

Commission invited interested parties to comment upon HQUS's Supplemental Petition on or before March 27, 1997. Six intervenors filed timely motions and pleadings. NiMo filed a Supplemental Protest, Indeck filed a motion to intervene stating it took no position on the Supplemental Petition, VPPSA and Burlington Electric Department ("BED") filed protests.

NFLH timely applied to the Commission for leave to answer by April 10, 1997. HQUS consented to that extension of time and reserves the right to file an answer to NFLH's motion. NFLH is the only Canadian utility that has intervened in the proceeding and may raise issues not addressed by other intervenors.

HQUS objects to the intervention of two movants whose interests relate exclusively to matters of Québec policy and law. Mouvement au Courant ("MAC"), filed a timely intervention but failed to demonstrate standing to intervene in this proceeding pursuant to 18 C.F.R. § 385.214(b)(2). HQUS opposes MAC's motion. The Crees again filed out of time a motion to intervene and to oppose the Supplemental Petition. HQUS opposes the Crees' motion to intervene on grounds that they have failed to demonstrate their standing to intervene pursuant to 18 C.F.R. § 385.214(b)(2).

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (1997), HQUS answers the motions, filings and pleadings made with respect to its Supplemental Petition in this consolidated answer.

To the extent any pleading is determined by the Commission to be merely a protest, because of the nature of the issues raised by HQUS's affiliation with a Canadian utility, HQUS respectfully requests waiver of the Commission's rule precluding answers in order to permit HQUS to more fully develop and clarify the record by this consolidated response.

II. Response to Supplemental Protest by Niagara Mohawk

NiMo questions the conformity of Hydro-Québec's Code of Conduct with the Commission's Rules and precedents with respect to the sharing of any market information, as opposed to just transmission information, between the Transmission Department and the Wholesale Merchant Department of Hydro-Québec or its affiliates. HQUS wishes to reassure the Commission that it has always intended to comply with the Commission's Rules and precedents. Accordingly, to the extent that the Codes of Conduct submitted with HQUS's Application need to be modified, they will be so modified to make them conform to the Commission's decisions in MP Energy, Inc., Montana Power Company, 78 FERC ¶ 61,005

(January 6, 1997) and UtiliCorp United, Inc., 75 FERC ¶ 61,168, reh'g denied, 76 FERC ¶ 61,192 (1996).

NiMo further complained that the Codes of Conduct submitted do not appear to cover the relationship between Hydro-Québec and its affiliate, HQUS. This concern is without basis. The Hydro-Québec Code of Conduct, attached as Exhibit 3 to the Supplemental Petition, states in its introductory paragraph that "Hydro-Québec has established this Policy Statement and Standards of Conduct to guide its relationship with affiliates, and affiliates between themselves, listed in attachment I with respect to its wholesale and retail power activities." HQUS, an affiliate of Hydro-Québec, is therefore covered by the foregoing Code of Conduct. Attachment I attached previously to Exhibit 8 of the December 18, 1996 Application was mistakenly omitted from Exhibit 3 to the Supplemental Petition and is hereby incorporated by reference. Furthermore, Exhibit 7 to the December 18, 1996 Application, Hydro-Québec Standards of Conduct, was left unmodified by the Supplemental Petition as stated at page 4, § II(1) of the Supplemental Petition. That Exhibit 7 clearly covers the relationship between the employees of Hydro-Québec engaged in transmission functions and those of any other affiliates, including HQUS.

NiMo notes that the Application did not specify whether the brokering arrangements between HQ and HQUS would be exclusive. HQUS represents that such brokering arrangements with HQ will not be on an exclusive basis.

III. Response to Protests by BED and VPPSA

In their protests VPPSA and BED argue that Hydro-Québec's indirect affiliate, Vermont Gas System ("VGS"), should be ordered to provide unbundled gas transportation service to electric producers such as VPPSA and BED. Since VGS is a local distribution company with intrastate facilities solely engaged in local retail distribution of gas, its activities within the state of Vermont are not subject to the Commission's jurisdiction. The matter of unbundling by VGS is best left to the Vermont Public Service Board. Furthermore, there is no basis for the Commission to require more of HQUS, *i.e.*, unbundling by VGS, than it has required of U.S. power marketers affiliated with gas producers, pipelines or distributors.

IV. Response to Other U.S. Power Marketers and Utilities

ECI, Enron, TCE and NYSE&G have not protested or commented on the Supplemental Petition. Their objections to the December 18, 1996 Application were that HQ's transmission tariff,

(1) did not allow wheeling-in, (2) provided rate and access preferences to HQ, and (3) did not explain why it differed from the Order 888 pro forma tariff. HQUS believes these concerns have been addressed by the revised transmission tariffs filed as Exhibits 1 and 2 to the Supplemental Petition. ECI's general protest against the advantages that affiliated power marketers allegedly have over unaffiliated competitors has been rejected by the Commission in Wholesale Power Services, Inc., 72 FERC ¶ 61,284 at 62,226-27 (1995) and Consolidated Edison of New York, Inc., ProMark Energy, Inc., 78 FERC ¶ 61,298 (March 14, 1997) slip op. at p. 8.

V. Response to Motion to Intervene and Protest by the Crees

A. Standing to Intervene

It is important, at the outset, to place the Crees' protest in context. The Crees consistently have opposed the introduction of competition in states where retail access has been authorized or is under consideration.[3] The Crees' sole

[3]For example, the Crees expressed concern that retail wheeling in New York might result in dramatically increased power imports from Hydro-Québec; even with a wholesale poolco structure, according to the Crees, specific measures would be needed to ensure no "undesirable" impacts. Re Competitive Opportunities Regarding Electric Service, Opinion 96-12, Cases 94-E-0952 et al., 168 PUR4th 515, 576 (NYPSC May 20, 1996). The Crees "achieved their goal . . . of denying GMP the authority to implement its Customer Pilot Pricing Program," and the utility's proposal was denied, though not with prejudice as the Crees had

concern is that competition in the U.S. might lead to increased exports by Hydro-Québec, which, in turn might lead to the construction of new hydro facilities in the northern part of Québec where the Crees live. Their fears are speculative and their protest in this proceeding seeks to deny the benefits of wholesale competition to U.S. consumers.

The concluding paragraph of the introduction to the Cree Protest at page 5 sets out the whole rationale for the Crees Protest: the Cree object to HQUS' application for fear that, if granted, the market-based rate authority would lead to "The construction of huge projects in northern Québec [that] will devastate the Crees' environment and harm or endanger the survival of migratory birds protected under the Migratory Bird Treaty. Hydro-Québec's increased exports to the U.S., by way of H.Q. Energy Services (U.S.), Inc. will hasten the construction of these mega-projects."[4] HQUS respectfully submits that an application before the Commission by HQUS for authority to sell power at market-based rates is neither the proper proceeding nor the proper forum for the Crees to air their concerns over potential environmental damage in Northern Québec. Pursuant to

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proposed. Re Green Mountain Power Corporation, Docket No. 5870 (VT PSB June 20, 1996).

[4]See also Exh. 1, ¶¶ 79-83 and Exh. 2 ¶¶ 4-6.

Rule 214(b)(2) of the Commission's Rules of Practice, 18 C.F.R. § 385.214(b)(2), the Crees have the burden to demonstrate their standing to intervene in this proceeding. They have not demonstrated why and how their participation in this market-based rate proceeding is in the public interest. The public interest they seek to protect is that of the environment in Northern Québec and that of migratory birds and their hunters. Therefore, HQUS opposes the Crees' petition for intervention.

B. Answer to the Cree Protest

Should the Commission accept the Crees' out-of-time intervention and protest, HQUS answers below the points raised in the Cree Protest.

1. Transmission Pricing

The affidavit of Ian Goodman ("Goodman Aff.") offered in support of the Cree Protest raises three (3) concerns with respect to HQ's transmission tariff: (a) lack of confirmation of the Tariff's cost basis, (b) unfairness of HQ's postage stamp rate and (c) unfairness of HQ's rates for non-firm transmission and energy imbalance service ("EIS").

a. Determination of the Cost Basis for HQ's Tariff.

The Goodman Aff., at ¶ 10, avers that HQ's transmission price cannot be properly reviewed because "The provincial government is both the sole owner and regulator of HQ." This is

simply a misconception. An independent agency, the Régie, rather than the Québec Government, has exclusive jurisdiction to "fix or modify the rates and conditions for the transmission or supply of electric power by Hydro-Québec." (Arts. 31 and 48 of Bill 50) This can be done either by application to the Régie of any interested party or by the Régie on its own initiative. The Supplemental Petition stated that the Tariff, as approved by the Government of Québec, since the Régie was not yet in operation, was cost based using the Commission's methodology, rolling into its cost the cost of all the equipment that is part of its integrated transmission system (Supp. Filing at 8).

HQUS respectfully submits that the proper way for the Crees to raise their concerns over the methodology used to calculate HQ's transmission rates is to file an application with the Régie, since the Régie determines under Québec law what rates Hydro-Québec will be allowed to charge for transmission services within Québec. This accords with the Commission's decision in TransAlta Enterprises Corp., 75 FERC ¶ 61,268, 61,876 (1996) which states that: "Moreover, the Commission did not, in Energy Alliance, require that specific rate methods be adopted by Canadian regulators."

What is relevant from the Commission's standpoint is to be assured that the tariff rates, terms and conditions that apply

to Eligible Customers, apply equally to Hydro-Québec when it uses its grid for its own wholesale transactions or for those of its affiliates, wherever situated. The Supplemental Petition and HQ's transmission tariffs provide this assurance.

b. HQ's Postage Stamp Rate.

The Cree Protest (Goodman Aff., ¶¶ 3-32) objects to HQ's use of a postage stamp rate and suggests instead some form, as yet unspecified, of zonal pricing. Even if, arguendo, the setting of HQ's transmission rates were properly subject to the Commission's jurisdiction, HQUS respectfully notes that the Commission has not required U.S. utilities to file zonal transmission rates as a condition of granting market-based rate authority. Accordingly, HQUS submits it should not be held to a standard different than that hitherto applied by the Commission to power marketers affiliated with transmission-owning utilities located in the U.S.

c. Non-Firm Service and EIS Rates.

The Cree Protest objects to firm and non-firm service being priced at the same rate. As is the case for other American utilities which also have the same rate for both types *of* service, HQ does not have the data or the methodology that could be used to arrive in a non-arbitrary manner at different prices

for firm and non-firm service.[5] HQUS notes that its firm service is offered on a KW basis while its ceiling non-firm hourly rate is offered on a KW/h basis.

The rate for EIS has been set at a level comparable to that noted in American utilities pro forma Tariffs. It is designed to act as a deterrent to the use of EIS.

HQUS respectfully submits that these rates can and will be subject to subsequent adjustments by the Régie through proceedings involving public hearings.

HQ will follow the discount policy expressed by the Commission in Order 889-A.[6]

2. Market Power

Using "data corrections," the Goodman Aff. claims to increase the market power of HQ. However, Mr. Goodman has failed to provide the Commission with evidence demonstrating why his

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[5]Utilities whose pro forma firm rates are the same as their ceiling non-firm rates are, for example: New York State Electric & Gas; Carolina Power and Light; Central Illinois Light Company; Cinergy Services, Inc.; Consumers Power Company; Duquesne Light Company; Hoosier Energy Rural Electric Cooperative; IES Utilities Inc.; Interstate Power Company; Kentucky Utilities Company; Northern Indiana Public Service Company; Ohio Valley Electric Corporation; San Diego Gas & Electric Company; South Carolina Electric & Gas Company; Southern Indiana Gas & Electric Company; Southern Illinois Power Cooperative; Union Electric Company; and Wisconsin Electric Power Company.

[6]Open Access Same Time Information System and Standards of Conduct, Order 889-A, 78 FERC ¶ 61,221 (3/4/97).

"corrected data" are more reliable or more accurate than those used by Mr. Lindsay. Accordingly, the Commission should reject those claims regarding HQ's market share as based on unsubstantiated data.

The Goodman Aff., at ¶¶ 37-40, objects to the analytical methods used by Mr. Lindsay on grounds that they do not take into account the fact that HQ's generation is hydroelectric. Aside from speculating on possible strategies based on hydroelectric capacity, Mr. Goodman does not offer any reasons why Mr. Lindsay's analytical methods are incorrect. Mr. Goodman also fails to consider the unpredictability of hydro supply, particularly in relation to HQ's obligation to its native load customers, and thus the risks inherent in offering long-term firm hydro power to off-system customers.

The Goodman Aff., at ¶¶ 42-46, disagrees with the amount of power that can be reliably transmitted over HQ's interconnections with New York and New England. Mr. Souliér's affidavit, Exh. 2 to the December 18, 1996 Application, clearly sets out the difficulty of relying solely on theoretical figures for intertie capacity. As an expert who is responsible for that function within HQ, Mr. Souliér is well aware of the limitations that come from other systems such as PJM and from the NPCC and NERC Rules. It was his considered expert opinion that the New

York interties have a maximum transfer capability of 1400 MW. HQUS respectfully draws the Commission's attention to the fact that none of the utilities interconnected with HQ, including intervenors NiMo and NYSE&G, have questioned HQ's account of the interties' capabilities.[7]

In the Goodman Aff., at ¶¶ 48-50, Mr. Goodman complains that the HQ surplus capacity estimate used by Mr. Lindsay are out of date and that the new forecast of supply and demand just released by HQ shows higher values. Mr. Goodman does not dispute that the estimates used by Mr. Lindsay were the most current available at the time he filed his affidavit. Further, he does not provide updates of the surplus capacity information for the other utilities that are suppliers into HQ's destination markets. In any event, even if Mr. Goodman's isolated pieces of surplus capacity information were as he has reported them, and even if the surplus for all other participants in the relevant markets were unchanged, the impact on

[7]In their application for authority to sell at market-based rates, both NiMo and NYSE&G have used the figure of 1550 MW as the capacity for the N.Y. interties with HQ. This figure is close to the one used by HQ. Actual operational experience for 1996 shows that the average amount of power transmitted was 980 MW and that at no time was there more than 1374 MW transmitted.

Mr. Lindsay's hub-and-spoke analysis would be minimal,[8] and only for one destination-market, the New York Power Authority ("NYPA"), and only for one year (2000). Single year values of this magnitude, even if accurate, do not indicate the presence of market power, and NYPA has made no allegation of market power. The Goodman Aff. further alleges that because HQ is winter peaking, HQ's uncommitted capacity is understated. This is incorrect as, under Louisville Gas & Electric Co., 62 FERC ¶ 61,016, at 61,146 (1995), capacity must be available year-round in order to be counted as uncommitted capacity.

In his Aff., at ¶¶ 51-54, Mr. Goodman argues that surplus capacity in New York and New England "could be significantly lower than that assumed by Mr. Lindsay." Again, Mr. Goodman does not dispute that the estimates used by Mr. Lindsay were the most currently available at the time he filed his affidavit. Rather, he argues that various factors, such as industry restructuring, competitive pressures, etc. "could significantly reduce the capacity and energy supplied by existing utility and non-utility generating capacity." The only example

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[8]Exhibit Nos.___ (WWL-A.24) and ___ (WWL-A.26), which show HQ's share of the NYPA destination market when Total East is constrained and when it is not constrained. Exhibit Nos. ___ (WWL-B.6) and ___ (WWL-B.9), based on the pooling approach, would also be affected, but to a lesser extent. The effect would also be limited to one destination market (NYPA) and one year (2000).

given by Mr. Goodman, however, is the recent retirement of the Connecticut Yankee Nuclear plant. This 660 MW unit, while not insignificant in size, is less than three percent of New England generating capacity. If it were excluded from New England's resources, HQ's share of total resources in the New England hub in 1997 would rise from 5.40 percent to 5.52 percent.[9] Review of all of the HQ destination markets indicates that HQ's market shares in New England destination markets would be largely unaffected, and in New York, destination markets would not be affected at all.[10] Moreover, Mr. Goodman fails to mention that the factors he cites, as well as the retirement of the Yankee plant, can be expected to increase the supply of capacity from new generating units.

The Goodman Aff., at ¶ 52, questions some of the data for New England used by Mr. Lindsay. FERC's hub-and-spoke analysis requires applicants to perform market analyses for each individual destination market. Pursuant to that requirement, Exhibit Nos.__ (WWL-A.1) to __ (WWL-A.22) of HQUS's Application show HQ's share of total resources and surplus capacity in each of the 11 New England utility destination markets. In order to

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[9]See Lindsay Exhibit No.___ (WWL-B.1).

[10]The largest effect is an increase in HQ's share of the Vermont Group destination market which increases from an average 1.88 percent to 1.94 percent.

calculate surplus capacity market share in each of these markets, it is necessary to use data that is compiled individually for each utility. Individual utility data that would allow one to calculate each utility's surplus is not provided in either the NEPOOL Forecast Report of Capacity Energy Loads and Transmission: 1996-2011 or the 1996 NEPOOL Resource Adequacy Assessment (1997-2001). Those reports only provide information that would allow one to calculate surplus capacity for the NEPOOL utilities as a whole. Consequently, to be consistent with FERC's requirements, it was necessary to use each utility's most recent integrated resource plan or comparable public document to calculate that utility's surplus capacity. Some of the data in those filings may not have been entirely consistent with the data that formed the basis of the 1996 NEPOOL reports. It was, however, the best public data available in the format needed to comply with FERC's hub-and-spoke requirements.

Had more recent data been available, the results for the New England markets would have been the same. Due to transmission constraints, HQ's market share in each market equals zero regardless of the individual New England utilities' amount of surplus capacity in those markets. In the New York markets, inclusion of New England utilities' surplus capacity has little impact on HQ's market shares. The New York market that is most

sensitive to New England utility surplus capacity is the NiMo market when Total East is not constrained (Exhibit No.__ WWL-A.28). In that market, HQ's share does not exceed four percent when the relevant New England utilities' (NU, NEES and VTGP) surplus is included in the market. In the most extreme case, assuming the New England utilities had zero surplus capacity in that market, HQ's market share would not exceed six percent in all time periods.

In paragraph 54, Mr. Goodman concludes that an analysis incorporating his "data corrections" would result in higher HQ market shares in New York markets. He does not claim that HQ's shares will exceed 20 percent in the surplus capacity or energy market in New England. Obviously, if the variables are significantly changed, the results will change. However, as far as the claims regarding New York are concerned, each of his "corrections" is dubious for reasons given above. Moreover, the Commission has not adopted a bright-line test for market power, especially where the applicant's share exceeds the Commission's safe harbor figure in very few destination markets and for a very limited period.[11]

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[11]For example, in the Entergy merger case (Entergy Services, Inc., 58 FERC ¶ 61,234 (1992)), post-merger shares exceeded 25 percent.

In the Goodman Aff., at ¶¶ 55-56, Mr. Goodman objects to Mr. Lindsay's choice of a study period ending at the year 2000. This objection fails to acknowledge that a three-year time horizon has been used by the Commission for generation market power analysis. Beyond a four-year period (in this case 1997-2000) it is assumed that the ability to sustain above-market prices can be offset by new entries into the market.[12]

3. Regulatory Oversight

The Cree Protest raises a number of questions stemming from the new Québec electricity regulatory regime. In short, it alleges that as a result of the new law: (a) FERC is stripped of its jurisdiction over HQ, (b) in the absence of indications to the contrary, it must be presumed that the Régie will not provide independent regulatory oversight.

a. Commission Jurisdiction Over HQ.

While it is true the Régie, rather than the Commission, will be the agency with oversight powers and with decision-making power over the items listed at p. 9 of the Cree Protest, it is not true to conclude that the Commission is thereby stripped of "all supervisory and enforcement authority." In fact, the

[12]Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, *FERC Statutes and Regulations* ¶ 31,036 at 31,657 (1996), rehearing pending.

Commission never had that supervisory and enforcement authority over HQ. Under the Federal Power Act, 16 U.S.C. § 824 (1997), the Commission's jurisdiction stops at the border. TransAlta Enterprises Corp., 75 FERC ¶ 61,268 at 61,876 (1996). Recent Commission orders, such as British Columbia Power Exchange Corp., 78 FERC ¶ 61,024 (1997) and Ontario Hydro Interconnected Markets, 78 FERC ¶61,369 (3/31/97) make clear that the "Commission ... does not seek to open intra-Canadian electric markets by imposing open access tariffs for transactions wholly within Canada" (Ontario slip op. at p. 11). The Commission thus does not seek to regulate transmission within Canada. In the instant case, HQUS and HQ have satisfied the conditions laid by the Commission in the above cases: reciprocal service into and out of Québec is provided and the transmission tariffs conform to the letter and spirit of the Order 888 pro forma tariff.

The Cree Protest's reliance on Texas-New Mexico Power Company, 78 FERC ¶ 61,187 ("TNP") (2/27/97) is misplaced. In that case, TNP did the opposite of what HQ did: TNP submitted a pro forma tariff only for the part of its transmission facilities subject to the Commission's jurisdiction and not for facilities within ERCOT, an area that is not subject to the Commission's §§ 205-206 jurisdiction. In contrast, HQ has in effect a tariff for its transmission facilities all of which are outside the

Commission's jurisdiction. In so doing, HQ has met the Commission's concern expressed in TNP.

As in TransAlta Enterprises Corp., 75 FERC ¶ 61,268 at pp. 61875-76 (1996), where the Commission found that "The Coalition's concerns about the specific charge for transmission service under a yet-to-be-developed method are, at this point speculative," the intervenors' concerns over HQ's transmission rates are speculative.[13]

b. The Régie's Independent Regulatory Oversight.

The Cree Protest takes issue with the Régie essentially on grounds that because the Québec Government owns HQ and also appoints the Régie's commissioners, somehow the Régie cannot be trusted to exercise independent regulatory oversight. This argument is tantamount to presuming that the Government and the Régie will act in bad faith, contrary to the legislative mandate granted by the Québec Parliament to the Régie in Bill 50. The Commission cannot and should not countenance such baseless impugning of a regulatory agency duly constituted under the laws of a friendly nation. Only the passage of time, not speculation, will show whether access is denied through discriminatory practices. Should that be the case, as the Commission stated in TransAlta, 75 FERC ¶ 61,268, at p. 61,876 (1996), "if an entity

[13]Cf. Enron's protest at II(A).

requires transmission service over Alberta Gridco to reach United States markets and that access is effectively denied through discriminatory practices against exporters .... the Commission will consider appropriate remedies on a case-by-case basis."

According to the Cree Protest, a further evidence of the difference between the Régie and the Commission is the provision of Art. 40 of Bill 50 which provides that no appeal lies from the decisions of the Régie. The provision of Art. 40 is by no means unusual or limited to the Régie. For example, "no appeal lies from the decisions" of the following Québec boards: Appeal Board for Workplace Injuries (Commission d'appel en matière de lésions professionelles) (R.S.Q. ch. A-3.001), Civil Service Commission (Commission de la fonction publique) (R.S.Q. 1978, ch. 15); Health and Human Services Board (R.S.Q. ch. C-34); Municipal Board (Commission municipale du Québec) (R.S.Q. ch. C-35); Essential Services Commission (Conseil des Services Essentiels) (R.S.Q. 1982, ch. 37), Québec Liquor, Gaming and Racing Board (Régie des alcools, des courses et des jeux) (R.S.Q. ch. R-6.1), Natural Gas Board (Régie du gaz naturel) (R.S.Q. ch. R-8.02).

Even if one were to assume that reciprocity requires that intervenors before the Régie be given the same rights as those provided by Section 313 of the Federal Power Act (16 U.S.C.

§ 8251) or in the Administrative Procedures Act[14] ("APA"), 5 U.S.C. §§ 501-706 (1997) to parties before the Commission, Art. 40 has to be read in conjunction with other provisions of Québec law. Indeed, under Art. 846 of the Québec Code of Civil Procedure, the Superior Court of Québec may revise a decision made by a board or commission body such as the Régie in the following cases:

> "(1) when there is want or excess of jurisdiction;
>
> (2) when the enactment upon which the proceedings have been based or the judgment rendered is null or of no effect;
>
> (3) when the proceedings are affected by some gross irregularity, and there is reason to believe that justice has not been, or will not be done;
>
> (4) when there has been a violation of the law or an abuse of authority amounting to fraud and of such a nature as to cause a flagrant injustice."

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[14] Under § 701(a)(2) of the APA, decisions "committed to agency discretion" are not judicially reviewable. In the United States, veterans had to wait until 1988 to have Congress authorize very limited judicial review of veterans' benefits decisions. This limited review does not extend to challenges to factual and law-applying determinations of the Department of Veterans Affairs. P.L. No. 100-687, §§ 101-403, 102 Stat. 4105, 4105-22 (1988).

While the rights afforded under Art. 846 above may not be the same in all respects as those afforded under U.S. law, judicial review of the Régie's decision can be obtained.

4. Wheeling-In Transmission Service

The Cree Protest alleges that because the Québec Government owns HQ and because municipalities that want to purchase electricity from suppliers other than HQ must obtain the government's approval, there will be no meaningful wheeling-in service in Québec.

This allegation is wrong for the following reasons. Prior to the adoption of Bill 50, municipalities could not purchase power from suppliers other than HQ because HQ had no obligation to offer any transmission service to the municipalities. The new law has added the obligation for HQ to offer transmission service so that Québec municipalities now are able to buy power from suppliers other than HQ, subject only to the Québec Government's approval, not subject to HQ's approval. At this point, to argue as the Cree Protest does that the Québec Government will not grant those approvals is nothing but baseless speculation. As the Commission noted in TransAlta, supra, after experience will have been gathered, a determination can then be made whether access to Québec wholesale customers is denied through discriminatory practices against U.S. exporters. Until

such time, the Commission cannot assume, as the Cree Protest would have it assume, that the Québec Government will act in a discriminatory manner vis-à-vis U.S. exporters to Québec.

Conclusion

HQUS respectfully requests that the Commission

(1) Deny the motions to intervene filed by MAC and the Crees;

(2) Permit HQUS to respond to the protests of the parties in order to provide a complete record for the Commission's decision;

(3) Grant HQUS' Application, as amended by its Supplemental Petition, and as further amended by such modifications to HQ's and HQUS' Code of Conduct as are necessary to conform to the Commission's policies and precedents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 11th day of April, 1997.

Adrian C. DiCianno

Adrian C. DiCianno