

**Date : 5/8/2010 9:21:52 AM**  
**From : "Bown, Charles W."**  
**To : "Thompson, Robert"**  
**Subject : Re: Communications Plan in anticipation of Regie ruling**

Just got up and now we are preparing for lunch guests.

I agree that we should not travel. Do you want to get together tomorrow?

Charles

Sent Via BlackBerry

----- Original Message -----

From: Thompson, Robert  
 To: Bown, Charles W.  
 Sent: Sat May 08 08:40:45 2010  
 Subject: FW: Communications Plan in anticipation of Regie ruling

Charles

Hope the prom was a great time. If it was like Emily's, your sleep is still disrupted because you are picking up the party-goers at 6am and feeding them breakfast.

In regard to the Regie decision, Ed called me late yesterday afternoon, and said the decision would be Monday or Tuesday, but no hint at all as to what the content might be.

Given the direct overlap with the St. John meeting, I am thinking we should stay home. Alternately, we could split up (you go to St. John and we pull you in by conference call). But I think the better solution is for both of us to stay close here and be available for whatever occurs. To be frank, most of the thinking and planning has been done, but we will offer better support for the Minister if we are here. Your thoughts? We will contact Claire, et. al on Monday morning.

Robert

-----Original Message-----

From: GBennett@nalcorenergy.com [<mailto:GBennett@nalcorenergy.com>]  
 Sent: Fri 5/7/2010 8:13 PM  
 To: Crawley, Brian; Matthews, Elizabeth; Barron, Tracy B.; Thompson, Robert; Bown, Charles W.  
 Cc: EMartin@nalcorenergy.com; Leona Barrington; JHarris@nalcorenergy.com  
 Subject: Communications Plan in anticipation of Regie ruling

Hello all,

Attached is our communications plan in contemplation of the release by the Regie of its decision regarding complaints made by Newfoundland and Labrador Hydro against Hydro Quebec TransEnergie. As discussed, we have been advised that the decision could be announced as early as Monday. We will update this plan to align with the actual decision as soon as it is released.

Comments and questions are welcome...

Regards,

Gilbert

Communication Plan - Regie Ruling  
 May 7, 2010

#### A. Introduction

Planning for the Lower Churchill Project is advancing towards Decision Gate 2, where selection of the development concept will be made. Work is advancing on multiple fronts, including:

- Project planning and engineering
- Environmental assessment
- Aboriginal consultation
- Commercial planning and marketing
- Financing structure and investment evaluation
- Development of market access strategy

The development of the market access strategy includes access through the Hydro Québec TransÉnergie (HQT) transmission system as well as the development of a Maritime transmission route through Newfoundland and on to the Maritime provinces. Commercial engagements are ongoing in multiple markets, and feasible project configurations are emerging with both the Maritime and HQT access alternatives.

While the Régie de l'énergie decision is important, it only represents a component of the broader market access strategy. The outcome of this decision does not change planning for other market access alternatives, including the Labrador-Island Link, the Maritime route as well as the pursuit of a separate 740 MW transmission service request into the Maritimes and New England which was filed with HQT in February 2007.

In the event that the Régie decision is unfavourable, avenues for administrative review and appeal exist and will be aggressively pursued.

#### Key Messaging if Ruling is Unfavourable

1. There are two alternative routes to market and we're continuing to pursue both options
2. While the Régie decision is important, it only represents a component of the broader market access strategy.
3. The outcome of this decision does not change planning for other market access alternatives, including the Labrador-Island Link, the Maritime route as well as the pursuit of a separate 740 MW transmission service request into the Maritimes and New England which was filed with HQT in February 2007.
4. We're disappointed with this ruling by the Régie and we're assessing our appeal options.
5. The focus continues to be on getting the data in order to comfortably commit to a decision on the future of the Project. Every piece of information we gather brings us a step closer.

#### B. Target Audiences

- . Board
- . Shareholder
- . People of NL
- . Local business community
- . Government of Quebec and Hydro Quebec
- . Market participants, ISOs and Regulators - Atlantic Canada, Ontario, New England and New York
  - o Government of ON, OPA, IESO
  - o Government of NS, Emera/NSPI
  - o NBSO, NB Power
  - o Government of PEI, PEI Energy Corporation
  - o FERC
  - o ISO NE
  - o National Grid
  - o TDI
  - o others not specifically identified
- . Federal Governments (Canada and US)
- . Media - local, national, international and QC

#### C. Communication Objectives

- . To ensure public/stakeholders understand that this is business and is necessary to gain the clarity and certainty required to make upcoming decisions on our path forward
- . To publicly explain our position on the ruling
- . To clearly articulate what this action means to the development of the lower Churchill and what the high-level next steps are
- . To deliver a balanced message that maintains the Project's momentum yet manages expectations
- . To correct any misinformation by commentators or HQ
- . To ensure fair and accurate media coverage locally and in other jurisdictions
- . To be prepared to respond to questions relating to our overall dealings with Quebec

#### D. Media Relations/Spokesperson

- . To ensure consistency of communication the only official media spokesperson for Nalcor Energy will be CEO and President, Ed Martin.
- . All media calls will be directed to Leona Barrington, Senior Communications Specialist.
- . Messages will be provided to Board and Leadership for reactive positioning with stakeholders.

#### E. Commercial Parties Communication

- . In addition to media, organized communication will be required out to key market entities (customers and ISOs etc.) with consistent messages for all parties, with market customization as necessary, such as Ontario vs. the Maritime Provinces.
- . A stakeholder management plan is being developed and will involve both Nalcor Energy and provincial government representatives.

#### F. Communication Approach

- . Media availability could potentially take place the same day the ruling goes public, however it is dependent on the time of day the decision is released. Ed Martin will conduct all interviews by phone as he will be out of town.
- . Media briefings/boards as required
- . Advisory (stating when we'd be available for comment), News Release, Q&A

#### G. Strategic Considerations

- . If the ruling is considered to be unfavourable, commentators will likely question the future of the Project's development seeing this as a roadblock, and could ignite a debate over how much longer Newfoundland and Labrador can pursue this Project's development. It is critical that we categorize this decision as just one element of the larger strategy leading to the Project's development. Emphasizing that we're still aggressively pursuing all options in preparation for a final Project decision will be essential.
- . While there will be a requirement to provide an indication of the next steps for appeal if the ruling is unfavourable, it will be important not to speculate in too much detail as time will be required to thoroughly review the ruling and assess its potential implications.
- . The Régie process should be presented as another demonstration of Newfoundland and Labrador taking a broad, long-term view of province's energy warehouse. Access to markets is not just focused on the development of the LCP - it's about finding a way forward that allows the province to take full potential of its

wealth of resources out to 2041 and beyond. Any challenges that are currently being presented need to be dealt with in order for the province to have a strong economic future. It must be clear that this information from the Régie is providing us with the clarity we need to solidify the next steps associated with this Project's development as well as the rest of the energy warehouse.

- The reasoning behind why we have chosen this approach must be presented from a viewpoint that is in keeping with the provincial government's agenda of developing resources, specifically the Lower Churchill Project, for the maximum benefit of the people of this province and will only bring us closer to being masters of our own destiny.

- In an effort to continue to garner national support for the Project's development, it will be important to continue to highlight the benefits of developing the resource - not only for NL but the rest of the country (construction benefits, GHG, etc.).

- Regardless of the outcome, the ruling will obviously evoke questions about the province's relationship with Quebec. It is important that all messages surrounding the relationship be delivered confidently, but not in a way that will degrade the province of Quebec. We must remain factual.

H. Key Messages - to be refined following decision release

#### Negative Decision

- This is precisely why we are pursuing two alternative routes to market. In parallel with our pursuit of open access in Quebec, we have also been exploring the link to the island and onward to the Maritimes with the same level of importance. That work is continuing and our collaboration with potential customers is ongoing.

- While the Régie decision is important, it only represents a component of a broader market access strategy.

- The outcome of this decision does not change planning for other market access alternatives, including the Labrador-Island Link, the Maritime route as well as the pursuit of a separate 740 MW transmission service request into the Maritimes and New England which was filed with HQT in February 2007.

- We disagree with the ruling regarding this application and are further assessing appeal options.

- We have been preparing for all potential outcomes from the Régie so while we're disappointed in this ruling, this is just one piece of the broader development and we are continuing to move the project forward on multiple fronts.

- We have not made any final decisions and are continuing to work closely with each of our potential customers.

- The focus continues to be on gathering the data in order to comfortably commit to a decision on the future of the Project. Every piece of information we gather brings us a step closer to that decision.

- This is not just about the development of Lower Churchill Project, we're taking a long-term view when assessing the development of our resources and access to markets is a critical piece which we'll be relentless in pursuing.

- This decision does not just have implications for Newfoundland and Labrador; it has broader implications for electricity trade across the country and throughout North America. Clearly, the existing processes do not guarantee fair and open transmission access in Canada and we will continue to take the lead in fighting for an even playing field and non-discriminatory access.

- With every milestone we achieve we are one step closer to making this Project a reality. Significant strides have been made in our drive to see this Project finally being developed. We're running the last mile of a 10 mile race.

- We are in the mindset that this Project will move forward. We'll take this decision and input it into our configuration model which will then bring us a step closer to presenting a variety of development options to the province.

#### Positive Decision

- The Régie's decision gives us greater certainty in our market access plan.

- This decision ensures we will receive the information that is required to move forward with transmission access through Quebec. Completion of the system impact study will inform our upcoming decisions on the configuration of the Project.

- We have said and continue to say that Newfoundland and Labrador is ready to pay its fair share for any upgrades required on the existing transmission lines. The Régie's decision has established what is fair both for Hydro-Québec and Nalcor Energy. We are very pleased.

- This is a decision that is good for the people of Newfoundland and Labrador and the people of Quebec. Both provinces - as well as the rest of the country - stand to benefit tremendously from the development of the Lower Churchill Project.

#### In-between Decision

- The Régie decision gives us some of the certainty we were looking for.

- We came to the Régie with a number of significant issues of OATT interpretation; this decision has provided clarity and interpretation in certain areas. That in of itself can be considered a step forward.

- We will have to study the decision and determine if there are certain aspects we may want to have reviewed.

- We are resolved to move forward with the development of the Lower Churchill. This is project that would be beneficial both for the people of Newfoundland and Labrador as well as the rest of the country.

#### General Messaging

- Significant detailed discussions regarding technical and legal issues took place during the hearings, however it all boils down to a very simple question: Does Hydro-Québec provide fair and reasonable access to its transmission lines as it is supposed to do under its own tariff rules which they've adopted from the United States?

- We believe the evidence is clearly to the contrary and for this reason we filed a number of complaints with the Régie.

- Open transmission access is central to enabling competition in electricity markets and to providing access to the significant untapped clean electricity supplies in our country.

- We are not looking for favourable treatment or a free ride. Four years after our initial application, we've only been requesting that Hydro-Québec interpret and apply their Open Access Transmission Tariff (OATT) in a fair and non-discriminatory manner.

- We are prepared to pay as much as \$200 million a year to use Hydro-Québec's power lines. We are also willing to pay the cost for any prudently required upgrades to the transmission system.

- We are fully prepared to pay both of these costs as long as they are fair and consistent with the open access rules.

- The development of the lower Churchill generation facilities is estimated to cost \$6.5 billion. Obviously, Newfoundland and Labrador will be a main beneficiary, but the sheer magnitude of the Project makes it equally obvious that other provinces such as Atlantic Canada, Ontario and Québec will benefit.

- Québec specifically, due to its geographic proximity and the expertise in hydroelectric development, is assured to benefit from the construction of the Lower Churchill complex as well as the upgrade of Hydro-Québec's lines.

- This is not to mention the line rental fees which could represent as much as \$6 billion over 30 years.

- One can only be perplexed by the attitude of Hydro-Québec, which is putting billions of dollars and employment opportunities at stake for Québécois.

#### I. History of Events Leading to the Régie Decision

On February 12, 2010 public hearings in front of the Régie de l'énergie concluded after four weeks of testimony by both Nalcor Energy and Hydro-Québec. Nalcor is now preparing for a ruling from the Régie and must be ready for all decisions possibilities (positive, in-between and negative). With a ruling in hand, Nalcor will have the further certainty needed to finalize an approach on how best to move forward with the development of the Lower Churchill Project.

The Open Access Transmission Tariff process in Quebec is based on the United States' Federal Energy Regularly Commission (FERC) establishment of transmission open access rules and regulations designed to eliminate the potential for discrimination in the provision of transmission service on the electric grid. In order to enjoy the ability to sell electricity into the United States, Québec must be in compliance with rules established by FERC.

The principles of open access and competitive markets have changed the structure of the electricity industry in the US and also influenced the electricity industry structure in Canada. In obtaining FERC authorizations, entities like Hydro-Québec must structure themselves and operate in a manner so as to mitigate potential market power, the most fundamental means of which is to provide open access to their own jurisdictions. Although Québec has modified the structure of its electricity system, Nalcor feels HQT's actions to date have not been in the "spirit" of open access and reciprocity. As a result, Nalcor has filed a number of complaints with the Régie de l'énergie, Quebec's energy regulator.

While the issues under dispute are complex, the essence of these complaints boil down to a single theme, Nalcor does not believe that the Hydro-Québec Open Access Transmission Tariff (OATT) has been applied in a non-discriminatory and transparent manner.

The complaints before the Régie cover the following key issues:

#### 1. Available Transmission Capacity

- . NLH applied for transmission service on January 19, 2006 for up to 2,800 MW
- . Part of the process is for HQT to indicate how much capacity is available before upgrades and cost associated with upgrades
- . HQT reported there was no available capacity on existing lines into Québec
- . NLH is of the view there is available capacity on existing lines
- . The outcome of this complaint has a significant impact on the cost of upgrades

#### 2. Completeness of System Impact Study (SIS)

- . SIS was initiated in March 2006
- . The last report provided by HQT was received in December 2007
- . HQT determined the SIS process was complete and unilaterally terminated the SIS process and cancelled the 2,800 MW reservation
- . NLH believes that HQT did not meet their study obligations as required by the OATT

#### 3. Accessibility to and through Québec

- . NLH requested deliveries to Québec, Ontario, New Brunswick, New England and New York
- . In December 2007, HQT confirmed the capacity requested by NLH into New Brunswick, New England and New York was available
- . Contrary to the OATT, HQT refused to sell this available capacity to NLH (Reasons used to deny service have not been applied to HQT and other companies)
- . HQT's decision denies NLH access to the export market and frustrates NLH's efforts to trade with other market participants in Québec

Given the number of issues in dispute there is a range of potential outcomes - however two key determinations will drive next steps:

- . Whether the Régie agrees the SIS is incomplete. If it doesn't agree, then SIS 101 will be terminated and the application is out of the queue.
- . Whether the Régie agrees the OATT was not applied correctly in calculating the available transmission capacity (ATC). If the Régie agrees with NLH, then NLH will resume its engagement with HQT, and in particular involve HQT in the update study on Ontario interconnection options already underway with Ontario's Independent Electricity System operator (IESO). The results of the revised SIS will provide revised cost updates and the clock will be "re-set" for NLH to make a decision on what basis to move forward to the Facilities Study phase and ultimately lead to a transmission service agreement. In the event that the Régie rules in favour of partial service, there is also a possibility that HQT may be ordered to offer NLH service agreements on existing intertie capacity into NE ( 95 MW), NY ( 190 MW), and NB ( 284 MW).

#### J. Summary of Potential Next Steps in the Event of an Unfavourable Decision

In preparation for the possibility of an unfavourable decision on these key issues, contingency planning has been undertaken to identify potential next steps and options in the following critical areas:

- i. Canadian appeals process
- ii. Other potential open access actions against HQT
- iii. US regulatory recourse
- iv. Next market access options on HQT grid

Regardless of the outcome of the Régie hearing, work will continue on the Maritime market access route. This is consistent with Nalcor's strategy of maintaining both options and continuing studies to increase technical and cost data upon which to base comparative economic analysis, and ultimately a project sanction decision.

#### i. Canadian appeals process

The appeal process includes the following steps, each of which must be followed in sequence:

1. Administrative review before the Régie (known as Revision)
2. Judicial review by the Superior Court of Québec
3. Appeal to the Court of Appeal of Québec
4. Appeal to the Supreme Court of Canada

The revision/appeal mechanisms must be pursued in sequence as follows:

#### Step 1 - An Administrative Revision before the Régie

A new Régie panel will review the decision on issues of law; no new evidence is filed. A request for revision must be made within 30 days of the decision. Acceptance of the request is usually within 30 to 60 days of the application, and if the application is turned down, application may be made for a judicial review in the Superior Court of Québec.

#### Step 2 - Judicial Review of the Régie Decision by the Superior Court of Québec

This proceeding will focus on a narrow scope of grounds for the review. It is not a re-hearing of the evidence, but is a challenge of the previous decisions of the Régie - both the initial decision and the administrative review.

#### Step 3 - Court of Appeal of Québec

The role of the Court of Appeal is twofold: to correct errors made by the Superior Court, and to resolve difficult questions of law or to clarify the law.

A motion for leave to appeal has to be filed within 30 days of the Judicial Review judgment.

#### Step 4 - Supreme Court of Canada

The case will focus on commercial and regulatory terms and independence of the Régie.

A motion for leave to appeal has to be filed within 60 days from the judgment.

#### ii. Other potential Open Access actions against HQT

The following avenues have been identified for further investigation before deciding on the merits of proceeding:

##### 1) HQT's Pending 890 OATT hearing before the Régie

HQT's OATT is not compliant with FERC's Order 890 rulings, which were passed in February 2007 and were intended to prevent undue discrimination and preference in the provision of transmission service by improving certain provisions of the original FERC Order 888 pro forma OATT. The hearing to update HQT's OATT to comply with Order 890 has been delayed because HQT requested it not proceed until NLH's complaints were heard. All parties protested the delay and NLH sent an informational filing to FERC, advising them that it was at HQT's request that the 890 hearing was delayed, not at the request of the Régie.

HQT is accountable to FERC on the adoption of the Order 890 standards and is already three years behind schedule and looks like it will be four before it is adopted.

Most recently, HQT has made a highly unusual request at the Régie to undertake "consultations" and « Technical meetings » with stakeholders in advance of the hearing before the Régie to deal with "contentious and non contentious issues". This is not an acceptable approach to NLH or other interveners because it could undermine the intended openness and independence of the Régie hearing itself, and further delay adoption of an 890 compliant OATT.

The Régie has yet to rule on which process will be followed i.e. conventional hearing versus consultation process first then followed by the hearing. In the event that the Régie accepts HQT's proposal, this action could be challenged.

##### 2) Quebec Superior Court legal challenge of transmission service agreements awarded to HQT

This action would be launched in order to challenge three transmission service agreements awarded to HQT for 1250 MW on HQT-ON path, 1200 MW on the HQT-Massena (NY) path and HQT-New England path, respectively.

The grounds for this challenge would be that HQT did not apply the OATT properly in the awarding these contracts, and that provisions of the OATT that were applied in one way to NLH were applied in a different manner to HQT.

##### 3) File a formal complaint at the Régie regarding HQT's adoption of a "harmonization" policy in the setting of available transmission capacity (ATC) on interconnections.

HQT has unilaterally adopted a policy which will limit available transmission capacity on the New York and New England interconnections to 1200 MW.

In doing so, they indicated that no existing transmission reservations at the time of the notice (July, 2009) will be affected; however all new service requests, including rollovers will be subjected to the lower ATC values.

This policy may have implications for NLH's existing requests - NLH is in process of engaging with HQT on this matter and a hearing is expected in the fall of 2010.

Brookfield has already filed a complaint at the Régie on the matter, but NLH may have grounds for a different complaint based on the outcome of the current complaints.

##### 4) Take action at the Competition Bureau

The grounds for the action would be "abuse of dominant position" that substantially lessens competition in a market, or is likely to do so.

This would require an "application for inquiry" by NLH to force HQT to limit the volume of interconnection capacity HQT has acquired - virtually blocking all existing interconnection capacity to neighbouring jurisdictions.

To date this action has been contemplated in the context of the HQT/NB deal and is being reconsidered in the context of the failure of that deal.

#### iii. US Regulatory Recourse

To date, NLH has made informational filings with FERC in HQUS' market based rate authorization proceeding regarding NLH's concerns about HQT's conduct and the associated complaints filed with the Régie. NLH has indicated that it will keep FERC apprised of the results and therefore an update on the Régie decision (positive or negative) will be sent to FERC. This is not the same as a complaint by NLH and does not require any action by FERC.

US legal counsel has indicated that it is not advisable to take any action in the US against HQT while the issue is still before the Régie - this includes during the administrative Revision process. We could however undertake action at FERC or DOE while a proceeding is pending before the Superior Court or further.

If we wish to take any action in the US, a case must be developed demonstrating a direct harm on US market interest(s) from HQT's anticompetitive activities. While preliminary consideration has been given to what this will entail, development of a case will require significant preparatory time. If negative, the Régie decision will be reviewed immediately by US legal counsel to commence assessment of basis for US recourse.

Two likely venues for a US complaint are:

- 1) FERC - a Market Based Rate (MBR) complaint proceeding regarding HQT's use of vertical market power and discriminatory treatment. The lack of an 890 compliant OATT could be part of the case. This proceeding would seek restrictions on HQUS' MBR authorization, designed to limit HQT's anticompetitive conduct as it pertains to access to US markets.
- 2) US DOE - a request to impose an explicit open access/reciprocity condition upon HQT's presidential permit for cross border facilities. DOE may have more latitude than FERC, which will be limited to act within the FERC existing open access regulatory framework.

## iv. Next Market Access Options on HQT Grid

In the event that SIS 101 is terminated and ATC is ruled to be nil by the Régie, NLH's second application in the queue (SIS 107) would then be processed. This application includes 456 MW into NB and 230 MW into NE. The feasibility of SIS 107 cannot be fully understood until the SIS is completed and technical information regarding power flow, limitations, and upgrades is made available. SIS 107 should be pursued, however, because it will provide additional information and it is queued ahead of other HQP requests.

A new request for service can also be launched. This should be completed once the IESO study in Ontario is updated and the 890 OATT reforms have come into effect. These reforms should provide for greater openness and transparency in the planning process than could be afforded today.

Fasken Martineau has advised that such a request could be made during an appeal process of the SIS 101 Régie decision, if it is done as a "de bene esse reservation", made without prejudice to its claim that the reservation is not legally necessary. The benefits of such an application include:

- it will provide new cost information upon which to make a decision - keeps HQT route active, beyond SIS 107
- it would be expected to be done under the light of the 890 reformed OATT
- it keeps pressure on HQ, while appeal processes proceeding
- it does not preclude moving forward with Maritime link studies

It should be noted, however, that this request will be queued behind other HQP bookings and limited export capacity from Québec will be available. It will be important to either act to cancel the HQP bookings or find partners for new intertie capacity. Multiple requests have been made for new generation on the Québec north shore, and while upgrades previously triggered by NLH could now be triggered by these projects, their in-service dates follow LCP. This will require further consideration prior to submitting an application.

All options will be further analyzed once the ruling has been received and thoroughly reviewed.

Drafted By: Leona Barrington

Date: Thursday, April 29. Revised May 7, 2010

Reviewed by: Joanna Harris and Gilbert Bennett

Approved by: Gilbert Bennett

Gilbert J. Bennett, P. Eng.

Vice President, Lower Churchill Project

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