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Doc. No. 10-8/3180

August 2, 2010

Ms. Anne-Marie Erickson  
Secretary  
National Energy Board  
444 Seventh Avenue, SW  
Calgary, AB  
T2P 0X8

Dear Ms. Erickson:

**Re: Hydro-Québec's Application for an Electricity Export Permit dated February 19, 2010 and revised/republished July 3, 2010**

I am writing in response to the public notice published July 3, 2010 regarding Hydro-Québec's application ("**Application**") for an Electricity Export permit to export 30 TWh annually. Nalcor Energy ("**Nalcor**") is Newfoundland and Labrador's Crown corporation responsible for development of energy resources.

In accordance with section 119.08 (2) of the *National Energy Board Act*, Nalcor wishes to bring to the attention of the National Energy Board ("**Board**") facts relevant to the Board's assessment of all considerations relevant to Hydro-Québec's Application, and particularly under section 119.06(2)a) of the Act:

*"the effect of the exportation of the electricity on provinces other than that from which the electricity is to be exported".*

Nalcor requests that the Board consider the following when assessing the Application:

- (1) the manner by which Hydro-Québec ("**HQ**") obtained the cross border transmission capacity required for export,
- (2) pertinent facts relating to the sourcing of energy for export, and
- (3) the overall extent to which HQ is impeding exports from other Canadian provinces.

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I have attached further background information on these three issues to this letter.

Nalcor believes that the acquisition of the interconnection capacity by HQ is inconsistent with the fundamental principles of open, non-discriminatory transmission access that HQ committed to adhere to in the Hydro-Québec TransÉnergie (“**HQT**”) Open Access Transmission Tariff (“**OATT**”).

Furthermore, HQ’s systematic pattern of preferential treatment of its own corporate divisions diminishes the ability of other provinces, such as Newfoundland and Labrador, to participate in export activities.

Nalcor believes the Board should address these issues under its authority to regulate electricity exports from Canada. HQ is failing to adhere to the requirements of their tariff. HQ’s compliance with its own OATT on matters relevant to its use of transmission capacity for exports is currently being questioned before the Régie and therefore the Board should defer its decision pending satisfactory resolution of these disputes.

The issues raised in this letter need to be addressed by the Board before the issuance of the export permit to HQ. Specifically, Nalcor requests that:

1. The Board recommends to the Governor in Council that a public hearing be held;
2. The Board establish conditions or withhold issuance of a permit until HQ demonstrates that it has all of the necessary permits, authorizations, and licences for both transmission and generation capability to actually export 30 TWh per year and that relevant pending disputes regarding HQ’s OATT compliance have been resolved.
3. The Board establish conditions or withhold issuance of a permit until HQ demonstrates non-discriminatory behaviour insofar as transmission access is concerned. Such conditions might include the establishment of market monitoring to provide independent assessment of evidence of discriminatory or preferential behaviour on international facilities used for electricity export.



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Nalcor would be pleased to cooperate with the Board to assist in ensuring the public interest is served in its consideration of this matter before it.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Gilbert Bennett".

**Gilbert Bennett, P. Eng.**

Vice President, Lower Churchill Project

Attachment

cc Mr. Christian Brosseau, Vice-président - Marché de gros, Hydro-Québec  
Ms. Hélène Cossette, Déléguée Affaires juridiques, Hydro-Québec



## Background

### 1. The Manner in which HQ Obtained Cross Border Transmission Capacity

In accordance with the HQT OATT<sup>1</sup>, transmission capacity is to be awarded on a first-come, first-served basis. However, Hydro-Québec Production (“**HQP**”) has obtained from HQT long-term transmission service agreements for 100% of the firm capacity on the New England and New York interconnections. These agreements were executed despite the fact that Nalcor had an application for transmission service, in dispute, but pending, on these same transmission interconnections.

Nalcor’s subsidiary, Newfoundland and Labrador Hydro (“**NLH**”), applied for long-term transmission service in January 2006, to wheel power from the Lower Churchill Project in Labrador through Québec to export markets, including New York and New England. The day after NLH made its request, HQP made two requests, each for 1,200 MW, to wheel power into New York and New England from generation sources in Québec and purchases from third parties. The application did not specify generation sources in Québec, as required by Section 17.2 of the HQT OATT.

As required by the HQT OATT, NLH’s request was studied by HQT. During the course of these studies, a number of significant disputes regarding HQT’s application of its own rules arose that culminated with HQT unilaterally terminating NLH’s service request. These issues were brought before the Québec Régie de l’énergie (“**Régie**”) in formal complaints in 2008. After procedural and other delays, a hearing of these complaints was finally held January 19 to February 12, 2010.

Notwithstanding the pending hearing of NLH’s complaints, on March 31, 2009, HQP and HQT executed two 35-year expedited transmission service agreements for all of the firm transmission capacity available on the two interconnections for which NLH had requested access.

On May 11, 2010, more than a year after the execution of HQP’s expedited service requests, the Régie issued its Decision D-2010-053 on NLH’s complaints and ruled against NLH on all issues under dispute<sup>2</sup>. NLH has requested an administrative revision of this decision and is currently waiting for the hearing date to be scheduled<sup>3</sup>. If the Régie fails to take corrective action, NLH will be considering all available legal options to challenge the unfair treatment it has received and remedy the adverse implications of the unlawful termination of its service request.

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<sup>1</sup> Annex I: HQT OATT (French and English version).

<sup>2</sup> Annex II: Decision D-2010-053 (French and English version).

<sup>3</sup> Annex III: Request for Administrative Revision of Decision D-2010-053.

In requesting this service HQT failed to identify the location of the generating facilities supplying the capacity and energy, as required in section 17.2 (iv) of the HQT OATT. Despite this deficiency, the requests were honoured and expedited service agreements executed.

In order to provide this transmission service to HQT, HQT must undertake upgrades to the HQT-MASS and HQT-NE interconnections into New York and New England respectively. These upgrades required authorization by the Régie. In the Decision D-2010-084 rendered on June 30, 2010, the Régie authorized HQT to proceed with the required upgrades to the HQT-MASS and HQT-NE interconnections, based on transmission service agreements that, as noted above, violated HQT's OATT<sup>4</sup>. NLH has also recently requested an administrative revision of this Regie decision<sup>5</sup>.

## **2. Pertinent Facts Relating to the Sourcing of Energy for Export**

In its Decision D 2010-053, the Régie accepted the argument made by HQT to the effect that the entire HQ fleet of generation resources was designated, according to the HQT OATT<sup>6</sup>, to serve the Québec Native Load, as described in the *Plan des charges et des ressources pour la période 2009-2019*<sup>7</sup>. This means that, for year 2010-2011, 40,197 MW, decreasing to 39,363 MW by 2019, of capacity owned and bought by HQ are designated to serve the Québec Native Load only.

In accordance with the HQT OATT<sup>8</sup>, HQ cannot make firm exports of power from resources designated to serve Québec Native Load, unless at least a portion of those resources is undesignated. To date we are not aware of any resources being "undesignated" by HQD. In accordance with the list of designated generation as presented in the above-noted document, there is no excess generation capacity available for firm exports. This demonstrates a clear inconsistency in information HQ has provided in accordance with Québec Provincial law, under the HQT OATT, and the basis for the permit under consideration by the Board. It is relevant for the Board to inquire into the "designation" and "undesignation" process because sales in the "Day Ahead" market from designated plants are not permitted under the HQT OATT since they are considered "Firm Sales to a Third Party."<sup>9</sup> Without some form of undesignation, HQ lacks generation capacity to undertake firm exports.

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<sup>4</sup> Annex IV: Decision D-2010-084 (French and English version).

<sup>5</sup> Annex V: Request for Administrative Revision of Decision D-2010-084.

<sup>6</sup> In accordance with sections 1.40.1 and 38.1 of the HQT OATT.

<sup>7</sup> Annex VI : Hydro-Québec Distribution, *Plan des charges et des ressources pour la période 2009-2019*, letter dated September 23, 2009, filed by HQT on July 13, 2010, in case R-3669-2008 Phase 2 at the Québec Régie de l'énergie.

<sup>8</sup> In accordance with sections 1.40.1 and 38.1 of the HQT OATT.

<sup>9</sup> Annex VII: FERC, Order 890-B, Preventing Undue Discrimination and Preference in Transmission Service, June 23, 2008, p. 145, paragraph 245.

In Section VI of its application, “Possible effects of the proposed exports”, HQ indicates that no new generation is required for the requested level of exports. Clarification of this point is required because, based on a review of HQP’s Energy and Capacity balance presented in HQ’s Strategic Plan 2009 – 2013 (page 18), HQP has forecast energy available of 18 TWh in 2010 decreasing to 11.3 TWh in 2014 (comprised of 14.5 TWh of available output net of -3.2 TWh comprised of variations in reservoir storage and purchases), before allowing for new generation capacity<sup>10</sup>. From the data presented in this table, it is not clear whether the long-term contracts included in “Deliveries outside Quebec” are exports to the US. If they are then this would account for about 2.4 TWh of the proposed exports.

Overall, this data raises questions for clarification as to the source of the energy to be exported, particularly in light of the designation issue raised above. Although HQ states that all resources are designated to serve native load, and it elsewhere indicates that 11.3 TWh is available for export in 2014, HQ is asking for authorization to export 30 TWh per year. The source of this additional energy is not apparent.

The Board should consider issues such as source of supply and their availability for firm sales, the status of new generation, including requirements for environmental assessment and HQ’s commitments to serve native load as presented at the Régie.

### **3. HQ Impeding Exports from other Canadian Provinces.**

Annual exports of 30 TWh per year are significant and require HQP to have access to at least 3,425 MW of interconnection capacity – this exceeds HQ’s firm interconnection into the US market. Indeed total capacity on these interconnections is 3,325 MW (1,600 MW to New England, 1,500 MW to New York and 225 MW to Highgate). HQP has made long-term transmission bookings on these existing interconnections totalling 2,625 MW. These firm long-term bookings represent 79% of the existing total capacity available from Québec into the US markets and 100% of the firm capacity available.

This domination over existing interconnection capacity has an adverse impact on Nalcor, which has been unfairly denied access to capacity on these interconnections and potentially on other market participants who have energy for export but cannot obtain firm transmission capacity.

NLH’s pending regulatory action is not the sole example of HQ’s actions in relation to transmission export. Another complaint is pending before the Régie from Brookfield Energy regarding HQT’s denial of Brookfield’s right under the HQT OATT to renew its transmission service agreement on the Quebec/New England interconnection. This complaint is scheduled to be heard on September 14, 2010. In this case, HQT unilaterally

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<sup>10</sup> Annex VIII: HQ’s Strategic Plan 2009 – 2013 (French and English version).

decided to reduce the firm available transmission capacity on the New England and New York interconnections and unfairly assigned these capacity reductions to existing customers with existing service agreements that expired subsequent to this policy decision. In doing so, HQT denied these customers the right to renew their service agreements, which is a right provided for in the HQT OATT.

NLH is waiting for confirmation from HQT of the implications on its existing 5-year 265 MW transmission service agreement on the Massena, NY interconnection.

With the forced, illegitimate termination of NLH's service request on these interconnections, as described in #1 above, and the denial of Brookfield's renewal rights, HQT benefitted from HQT's policy change because its 35-year bookings, which pre-date the change, will not be affected. This will ensure that HQT has 100% of the firm transmission capacity on the New York and New England interconnections for 35 years.

These pending disputes are of great significance to market participants who wish to avail of HQT's transmission service to export energy from Canada to the United States from other provinces in Canada.

### **Consequences to HQT's Exports Permit Application**

In light of the relevant matters under dispute in relation to transmission capacity required to utilize the export permit and the evidence of HQT's actions that have negative implications for the export of electricity from other Provinces, Nalcor requests that the Board delay issuing an export permit to HQT. Nalcor requests that the Board issue a recommendation to the Governor in Council that a public hearing be held to review all relevant evidence relating to the unfair practices presented in this letter. Furthermore, NLH requests that the Board make the issuing of the export permit conditional on HQT identifying the location of the generating facilities supplying firm capacity and energy for which the export permit is sought, thereby ensuring consistency with adherence to the HQT OATT and the volume of the requested export permit.

Permitting this quantity of energy to be exported by HQT without conditions assuring that HQT will correct its anti-competitive behaviour and respect the law is inappropriate and inconsistent with the public interest.