



Fair Access to Québec's Transmission System is Denied: Nalcor Energy

May 12, 2010 – The Régie de l'énergie (Régie), Québec's energy regulator, today issued their ruling in response to complaints filed by Newfoundland and Labrador Hydro, a subsidiary of Nalcor Energy, against Hydro-Québec TransÉnergie.

As a part of options being pursued by Nalcor in an effort to develop the Lower Churchill Project, the company was seeking to export power across the Québec transmission system from the 3,074MW Lower Churchill Hydroelectric Project in Labrador. As a result of a refusal by Hydro-Québec to provide fair access, Nalcor filed complaints with the Régie de l'énergie, for a hearing based on the principles of open access and non-discrimination. The Régie ruled solely in favour of Hydro-Québec and dismissed all legitimate arguments presented by Nalcor. Nalcor feels strongly that this is in contravention with Québec and Federal frameworks supporting competition. Québec's rules for open access were modeled after US Federal Energy Regulatory Commission (FERC) market rules designed to eliminate the potential for discrimination in the provision of transmission service on the electric grid.

"We disagree completely with the conclusions and ultimate ruling announced today by the Régie de l'énergie and intend to aggressively pursue all revision and appeal options," said Ed Martin, President and CEO, Nalcor Energy. "While there has been much detailed discussion around technicalities and legalities, 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 strongly believe that the evidence is to the contrary."

Nalcor's preliminary legal review and assessment of the ruling reveals that the Régie refused to suspend the timelines associated with Nalcor's transmission service request while the company was following the formal complaint procedures. As a result, Nalcor's application for transmission access has been terminated. However, a second application is still pending with Hydro-Québec TransÉnergie.

"The Régie failed to suspend the process stating that doing so would be equivalent to changing the terms and conditions of the Open Access Transmission Tariff," says Martin. "This is contrary to the very essence of open access fairness. In fact, the Régie goes beyond what Hydro-Québec TransÉnergie was arguing in the hearing and by doing so the decision renders the complaint process ineffective."

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The Régie also went so far as to designate the Churchill Falls facility, a facility that is outside Québec and beyond the jurisdiction of the Régie, under the control of Hydro-Québec TransÉnergie. Nalcor Energy strongly disagrees with the Regie's interpretation of Hydro-Québec's rights and entitlements in relation to the Churchill Falls plant.

Martin says, "The Régie has chosen to completely ignore the fact that the Churchill Falls Generating Station is located in the province of Newfoundland and Labrador, a separate jurisdiction from Québec, and that Nalcor Energy holds majority interest in the Churchill Falls facility. The output of the plant is sold to several different customers, only one of which is Hydro-Quebec. The Churchill Falls plant is subject to Newfoundland and Labrador law and regulation."

"We approached the Régie in good faith and asked they independently arbitrate the complaints and after our review and assessment we feel they have not protected our procedural rights." Martin went on to add, "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, and in particular for Ontario and the Maritime Provinces. Clearly, the existing processes do not enable fair and open transmission access and we will continue to take the lead in fighting for an even playing field and non-discriminatory access."

Newfoundland and Labrador has been willing to pay its fair share of rental fees and system upgrades required to transport electricity from the Lower Churchill Project through Québec. Nalcor was offering to pay the pre-determined tariff amount of approximately up to \$6 billion over 30 years, as well as invest billions of dollars in upgrades to Québec's transmission system.

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

Nalcor Energy has been preparing for all potential outcomes from the Régie and while today's decision is important, it represents only a component of a broader market access strategy for exporting power from the Lower Churchill Project to key markets. The outcome of this decision has not changed planning for other market access alternatives, including exporting power from Labrador to the island of Newfoundland and then into the Maritime Provinces via a subsea link and into the Northeastern US markets. Nalcor is also continuing its pursuit of a separate 724 MW transmission service request into the Maritimes Provinces and New England which the company filed with Hydro- Québec TransÉnergie in February 2007.

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

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The development of the Lower Churchill Project is moving forward on multiple fronts and involves further study on the Project's technical and environmental elements as well as its final configuration. 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 Project.

The Lower Churchill Project, one of Nalcor Energy's five lines of business, is the most attractive undeveloped hydroelectric project in North America. The Project is two proposed installations, Gull Island and Muskrat Falls, will have a combined capacity of 3,074 MW and can provide 16.7 Terawatt hours of electricity per year. That is enough to supply hundreds of thousands of households annually and contribute significantly to the reduction of air emissions from thermal, coal and fossil fuel power generation.

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Backgrounder

Open transmission access is central to the operation of competitive electricity markets and to providing access to the significant untapped clean electricity supplies throughout Canada and the United States.

The Federal Energy Regulatory Commission (FERC) in the United States has established market 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.

Though Québec has modified the structure of its electricity system, its actions to date have put into question whether or not the "spirit" of open access and reciprocity is being applied.



As a result, Nalcor Energy filed a number of complaints with the Régie de l'énergie, Québec's energy regulator and during January and February 2010, these complaints were reviewed during hearing proceedings in Québec.

The complaints before the Régie cover the following key issues:

1. Available Transmission Capacity

- Nalcor Energy applied for transmission service on January 19, 2006 for up to 2,800 MW
- Part of the process is for Hydro- Québec TransÉnergie to indicate how much capacity is available before upgrades and cost associated with upgrades
- Hydro- Québec TransÉnergie reported there was no available capacity on existing lines into Québec
- Nalcor Energy 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
- Hydro- Québec TransÉnergie determined the SIS process was complete and unilaterally terminated the SIS process and cancelled the 2,800 MW reservation
- Nalcor Energy believes that HQT did not meet their study obligations as required by the OATT

3. Accessibility to and through Québec

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