

National Energy Board

Reasons for Decision

Hydro-Québec

Application dated 24 May 1994
for a permit to export firm and
interruptible electricity

December 1994

Electricity Exports

National Energy Board

Reasons for Decision

In the Matter of

Hydro-Québec

Application dated 24 May 1994 for a permit to
export firm and interruptible electricity

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Canada 1994

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Table of Contents

Abbreviations	iii
Recital and Intervenors	v
1. Preamble	1
1.1 Procedures Followed in Examining the Application	1
1.2 Environmental Considerations of the Proposed Exports	2
1.3 The Applicant’s Public Notification Procedures	2
2. Background	3
2.1 The Applicant	3
2.2 The Export Markets	3
3. The Application	4
3.1 Requested Authorizations	4
3.2 Information Supplied by the Applicant	4
3.2.1 Provincial and U.S. Approvals Related to the Exports	4
3.2.1.1 Provincial Approvals	4
3.2.1.2 U.S. Approvals	4
3.2.2 The Effect of the Exportation on Provinces other than Québec	5
3.2.3 The Impact of the Exportation on the Environment	5
3.3 Fair Market Access	5
3.3.1 Information Supplied by the Applicant and Directly Interconnected Systems	5
3.4 Term of the Requested Permit	6
4. Views of the Board	7
4.1 U.S. and Provincial Approvals Related to the Exports	7
4.2 Environmental Considerations	7
4.2.1 Production Facilities	7
4.2.1.1 Construction of Production Facilities	7
4.2.1.2 Operation of Production Facilities	8
4.2.2 Transmission Facilities	9
4.2.3 Conclusion on the Environmental Considerations	10
4.3 The Effect of the Exportation on Provinces Other Than Québec	10
4.4 Fair Market Access	10
4.4.1 Ensuring That Fair Market Access Requirements Will Be Satisfied	11
4.4.2 Maximum Duration for Individual Export Contracts Under the Requested Permits	12
4.4.3 Transactions Other Than Sale Transfers	13
4.5 Term of the Requested Permits	14
4.6 Maximum Export Quantities	15
4.7 Other Issues	16
4.7.1 Information Filing Requirements	16
4.7.2 Transfer of Previously Authorized Export Quantities to a New Permit	17
4.7.3 Regulation of Particular Export Transactions	17
4.7.4 Relevant Considerations in Section 119.06	17
4.7.5 Requirement for Cost-Benefit Analysis	18

4.7.6	Duties Arising Pursuant to the Supreme Court of Canada Judgement	19
4.7.7	Resource Planning and Management	19
4.7.8	Public Notification	19
5.	Disposition	20

List of Appendices

I	Hydro-Québec Major Electrical Installations	21
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Permits

PERMIT EPE-64		22
PERMIT EPE-65		25

Abbreviations

Units of Measurement

kW.h	kilowatt hour	1 000 watt hours
GW.h	gigawatt hour	1 000 000 kW.h
TW.h	terawatt hour	1 000 GW.h
kV	kilovolt	1 000 volts
MW	megawatt	1 000 000 watts

Names

the Act	<i>National Energy Board Act</i>
the Applicant	Hydro-Québec
Au Courant	The Mouvement Au Courant
the Board	National Energy Board
Committee	James Bay Committee
EARP Guidelines Order	<i>Environmental Assessment and Review Process Guidelines Order</i>
the Electricity Regulations	draft <i>National Energy Board Electricity Regulations</i> , dated 7 July 1993
the Fund	Sierra Legal Defense Fund Society
GCCQ-CRA	Grand Council of the Crees (of Québec) & Cree Regional Authority
Greenpeace	Greenpeace Québec
Hydro-Québec decision	<i>The Grand Council of the Crees (of Québec) and the Cree Regional Authority v. The Attorney General of Canada et al, [1994] 1 S.C.R.159</i>
Maritime Electric	Maritime Electric Company, Limited
Memorandum of Guidance	The National Energy Board's 7 July 1993 Memorandum of Guidance on Process Reforms Concerning Electricity Export and International Power Line Applications, as amended
MIREQ	Mouvement pour l'instauration de la réglementation de l'électricité au Québec

NPCC	Northeast Power Coordination Council
NRDC	Natural Resources Defence Council
REVE	Le Regroupement Ecologiste Val D'Or et Environs
RFP	Requests for Proposals
Sierra Club-Atlantic	Sierra Club - Atlantic Chapter
Sierra Club-Vermont and NECEE	Sierra Club - Vermont Chapter, and, the New England Coalition for Energy Efficiency and the Environment
UQCN	Union québécoise pour la conservation de la nature

Recital and Intervenors

IN THE MATTER of the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER of an application dated 24 May 1994 by Hydro-Québec for authorization to export electricity under Part VI of the said Act, filed with the Board under file number 6200-Q001-11.

EXAMINED by means of written submissions.

BEFORE:

R. Priddle	Chairman
J.-G. Frédette	Vice-Chairman
A. Côté-Verhaaf	Member
C. Bélanger	Member
R. Illing	Member
K.W. Vollman	Member
R.L. Andrew	Member

INTERVENORS:

Greenpeace Québec

James Bay Committee

Grand Council of the Crees (of Québec) & Cree Regional Authority

Maritime Electric Company, Limited

The Mouvement Au Courant

Mouvement pour l'instauration de la réglementation de l'électricité au Québec

Natural Resources Defence Council

Ontario Hydro

Le Regroupement Ecologiste Val d'Or et Environs

Sierra Club - Atlantic Chapter

Sierra Club - Vermont Chapter, and, the New England Coalition for Energy Efficiency and the Environment

Sierra Legal Defense Fund Society

Union québécoise pour la conservation de la nature

Chapter 1

Preamble

This report describes the information examined by the National Energy Board ("the Board") and the conclusions reached in its assessment of the application by Hydro-Québec ("the Applicant") dated 24 May 1994 requesting authorization to export firm and interruptible electricity. The purpose of the assessment was to determine whether to recommend to the Minister of Natural Resources Canada that the Governor in Council designate the application for licensing, and, to determine the terms and conditions of an export permit if one is to be issued.

1.1 Procedures Followed in Examining the Application

As part of its examination of the application, the Board sought the views of interested parties, including the general public, which it considered along with other information that the Board required the Applicant to furnish and the Applicant's response to the submissions received from interested parties. The procedure followed in its examination of the application was that as set out in the National Energy Board's 7 July 1993 Memorandum of Guidance on Process Reforms Concerning Electricity Export and International Power Line Applications, as amended ("Memorandum of Guidance").

In its examination of the application, the Board ensured that relevant information requirements set out in Section 119.03 of the *National Energy Board Act* ("the Act") and in the draft *National Energy Board Electricity Regulations*, dated 7 July 1993 ("the Electricity Regulations"), attached as Appendix II to the Memorandum of Guidance, were met.

In conducting its assessment, the Board sought to avoid duplication of measures taken in respect of the export by the Applicant and by the Government of Québec, and had regard to all considerations that appeared to it to be relevant. These considerations included:

- a) the effect of the exportation on provinces other than Québec;
- b) the impact of the exportation on the environment;
- c) whether the Applicant has:
 - (i) informed those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale; and
 - (ii) given an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions specified in the application to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada; and
- d) such considerations as are specified in the Electricity Regulations.

The process described in paragraph (c) above is referred to hereafter as providing "fair market access".

1.2 Environmental Considerations of the Proposed Exports

The Board's examination of the application included consideration of the effect of the export proposal on the environment pursuant to paragraph 119.06 (2) (b) of the Act. In addition, the examination incorporated a screening of the environmental effects of the proposal in accordance with those requirements of the *Environmental Assessment and Review Process Guidelines Order* ("EARP Guidelines Order") which did not duplicate any portion of the Board's own regulatory process.

In respect of the assessment of the impact of the exportation on the environment pursuant to paragraph 119.06 (2) (b) of the Act, the Board was governed by the judgement of the Supreme Court of Canada in *The Grand Council of the Crees (of Québec) and the Cree Regional Authority v. The Attorney General of Canada et al* (the "Hydro-Québec decision")¹. The Supreme Court found that when assessing a proposal to export electricity, the scope of the Board's inquiry was not limited "to the environmental ramifications of the transmission of power by a line of wire, [nor did it] permit a wholesale review of the entire operational plan of Hydro-Québec."² It held that it is appropriate for the Board to consider the source of the electric power to be exported if new facilities are required to serve, among other needs, the demands of the export contract. If the construction or advancement of such new facilities is found to be related to the export, then the Board is entitled under the Act in matters of federal concern to consider the environmental effects within a province if it considers that they are relevant to its decision to grant any export authorization.

1.3 The Applicant's Public Notification Procedures

The Board notes that Hydro-Québec published on 2 July 1994 a notice of its application in English and French in the Canada Gazette; in French in *La Presse de Montréal*, *Le Journal de Montréal*, and *Le Soleil de Québec*; and in English in the *Montreal Gazette*. The Board is of the opinion that the above noted notices satisfy the publication requirements of the Act and the Board. Hydro-Québec also sent copies of its application to New Brunswick Power, Cornwall Electric, Churchill Falls (Labrador) Corporation Limited, and Ontario Hydro, these being utilities immediately adjacent to the Hydro-Québec system.

¹ [1994] 1 S.C.R. 159

² *Supra*, note 3 at 195

Chapter 2

Background

2.1 The Applicant

The Applicant, Hydro-Québec, a public utility producing and distributing electricity throughout Québec, conducts research related to energy and the transformation and conservation of the use of energy. Hydro-Québec was established in 1944 by an Act of the legislature of the Province of Québec and currently operates under the authority of the *Hydro-Québec Act* (R.S.Q. 1977, c. H-5).

Hydro-Québec owns and operates an electric power system which covers nearly all regions of Québec. Appendix I contains a map of Hydro-Québec's major electrical installations in 1994. The map also indicates interconnections with systems outside the province.

The Applicant's 1993 production of electricity was 96% from hydraulic generation. Its production and transmission facilities include 84 generating stations with an installed capacity of 29 000 megawatts with an additional 5 000 megawatts available from Churchill Falls. Hydro-Québec's facilities include some thirty 735 kV substations and some ten 735 kV transmission lines totalling more than 10 000 kilometres in length.

2.2 The Export Markets

Hydro-Québec has main interconnections with the neighbouring American states of New York, Vermont and the other New England states through Vermont. There are also some other international power lines fed by the Hydro-Québec system, but these are primarily low-voltage distribution circuits for border accommodation purposes. Hydro-Québec has requested an electricity export permit authorizing it to export to any customer whether directly linked to its power system or not.

Chapter 3

The Application

3.1 Requested Authorizations

Hydro-Québec requested a 30-year permit authorizing the export of firm and interruptible electricity. The requested permit would authorize exports under contracts of a maximum period of five years to any customer whether directly linked to its power system or not. In addition, Hydro-Québec requested that the permit allow transactions pertaining to equichange, storage, adjustments and carrier transfers.

The Applicant stated that the maximum quantity of firm power that might be simultaneously exported is estimated to be 4 825 MW, less any firm power that might be exported under any other export licences or permits issued by the Board to Hydro-Québec. The expected maximum monthly and annual quantities of firm energy exports are stated to be 3 170 GW.h and 20 000 GW.h respectively, less any quantities of energy exported under any other export licences or permits issued by the Board to Hydro-Québec. The expected maximum annual quantity of interruptible energy for export will not exceed 30 000 GW.h less any quantities of firm energy exported under the requested permit. These quantities include equichange, storage, adjustment and carrier transfers.

3.2 Information Supplied by the Applicant

3.2.1 Provincial and U.S. Approvals Related to the Exports

3.2.1.1 Provincial Approvals

Hydro-Québec indicated that, every three years, it must submit its Development Plan for approval to the Government of Québec, as required by Order 971-91 made pursuant to Section 21.3 of the *Hydro-Québec Act*. The Development Plan addresses every aspect covered by the company's mission and commitments, including the measures necessary for supplying electricity to its own service area within Canada and for fulfilling its firm contractual commitments to markets outside that service area.

Also, under Section 22.0.1 of the *Hydro-Québec Act*, Hydro-Québec must submit for approval to the Government of Québec any contract it enters into in respect of exporting electricity. Any such contract must also be authorized by the Government of Québec under the terms of Section 6.1 of the *Act Respecting the Exporting of Electricity* (R.S.Q. 1977, c. E-23).

On presentation of any proposed sales contract for markets outside of Québec, the Government of Québec conducts a study to assess the technical and economic aspects of the export contracts.

3.2.1.2 U.S. Approvals

Hydro-Québec stated that due to the nature of its application, it cannot at this time provide information on any approvals required in the U.S. to import the electricity that might be exported by Hydro-Québec under the requested permit.

3.2.2 The Effect of the Exportation on Provinces other than Québec

Hydro-Québec stated that it does not expect the proposed exports to have any negative impacts outside Québec. Hydro-Québec indicated that exports made via all of its international power lines do not affect the reliability of neighbouring power systems and that it complies with the reliability and safety standards of the Northeast Power Coordination Council ("NPCC") of which Nova Scotia Power, Ontario Hydro, and New Brunswick Power are also members. Hydro-Québec underscored the fact that NPCC standards are continuously tested to ensure the safe operation of these interconnections and that the loss of one of the interconnections would not have repercussions on neighbouring power systems. As part of its application, Hydro-Québec provided copies of letters it had sent to neighbouring utilities which stated that, from Hydro-Québec's analysis of the proposed exports, it had not identified any negative impact on the neighbouring utilities. In response, New Brunswick Power, Ontario Hydro and Cornwall Electric stated that they did not expect any reliability problems as a result of the proposed exports.

3.2.3 The Impact of the Exportation on the Environment

Hydro-Québec stated that the exports which might be made under the requested permit would not have any environmental effect. Hydro-Québec submitted that the requested permit would allow it to optimize the use of existing generation and transmission facilities, to the benefit of the environment by delaying the construction of new facilities. Hydro-Québec also submitted that export contracts with a maximum duration of five years would not justify the construction or advancement of construction of new facilities. With respect to the management of reservoirs associated with the proposed exports, Hydro-Québec stated that it operates its reservoirs in accordance with various constraints (for example, technical, hydraulic and environmental), and the requested permit would not modify those existing constraints, which would remain within the limits currently in force.

Furthermore, Hydro-Québec indicated that electricity to be exported under the requested permit would come from its whole system and would be transmitted over facilities which have obtained all the necessary provincial and federal permits and certificates and are currently operating within the applicable provincial and federal standards and guidelines. With respect to new transmission facilities, Hydro-Québec stated that at this time no new international power lines are forecast to be constructed to supply these contracts, but if any new lines were to be constructed in the future, approval of the Board would be obtained.

3.3 Fair Market Access

3.3.1 Information Supplied by the Applicant and Directly Interconnected Systems

Hydro-Québec submitted that, under the fair market access policy, it is not required to provide information to neighbouring Canadian utilities on the quantities and categories of service offered on a case-by-case basis, prior to concluding contracts with foreign buyers.

It also submitted that, for the same reasons, it does not have to systematically offer neighbouring Canadian utilities, on a case-by-case basis, prior to concluding contracts with U.S. buyers, the possibility of purchasing electricity subject to the same conditions.

In addition, Hydro-Québec submitted that its current practices and close business relationship with neighbouring Canadian utilities have provided and will continue to provide fair and constant access to all and any electricity which Hydro-Québec may choose to export.

Hydro-Québec indicated that indeed, both formally and informally, it is constantly informing neighbouring utilities of the availability of electricity from its system. Formally, these utilities have access to that information in Hydro-Québec's Annual Report and Development Plan. They also have formal access to it at the twice-yearly meetings of the Operations Committees, where the state of production and transport systems and the state of interconnections between Canadian utilities are discussed. Informally, there are numerous ad hoc meetings and telephone conversations in which information on the state of systems, hydraulic reserves and U.S. markets is shared and updated.

Hydro-Québec also stated that its ongoing willingness to negotiate has provided, and will continue to provide, to all neighbouring Canadian utilities, fair access to any electricity which it may export. Hydro-Québec highlighted the fact that it has over 70 contracts for the sale and purchase of electricity, interconnection agreements and operating agreements with neighbouring utilities, including 40 with Ontario Hydro and about 20 with New Brunswick Power.

In light of the preceding, Hydro-Québec contended that it is the responsibility of the neighbouring Canadian utilities to manifest their interest in purchasing electricity in due time if they wish to benefit from the same conditions as U.S. buyers for the same quantities and categories of service.

Prior to filing its application with the Board, Hydro-Québec sent letters to the directly interconnected systems of New Brunswick Power, Cornwall Electric, Churchill Falls (Labrador) Corporation Limited and Ontario Hydro regarding fair market access. Hydro-Québec also served copies of its application on them.

3.4 Term of the Requested Permit

Hydro-Québec asked that the requested permit have a 30-year term, the maximum allowed under the Act. In response to submissions by interested parties, Hydro-Québec noted that the hydraulic nature of its power system makes it possible for the operation of the Hydro-Québec system to complement the operation of neighbouring American systems which are predominantly thermal in nature. Accordingly, it requested a permit which would give it for the longest term possible the flexibility it wanted with respect to its export market.

Chapter 4

Views of the Board

In its assessment of the application, the Board has considered those matters outlined in Section 1.1 of these Reasons for Decision and all other relevant considerations. In particular, the Board has taken into account the interested parties' submissions, the Applicant's response to the interested parties' submissions, and the interested parties' replies to the Applicant's response. The Board's views on all relevant matters are given below.

4.1 U.S. and Provincial Approvals Related to the Exports

The Board notes Hydro-Québec's evidence that because the terms and conditions of export contracts underpinning the requested authorization are not known, information regarding U.S. approvals cannot be provided at this time. With respect to provincial approvals, the Board notes Hydro-Québec's statement that when new contracts are concluded, the applicable provincial approval process will be followed.

4.2 Environmental Considerations

The Board, in considering the environmental impact of the exportation of electricity, is governed by the judgement of the Supreme Court of Canada described in Section 1.2 of these Reasons for Decision. Therefore, with respect to this application, the Board must first establish if new production and transmission facilities will be required to serve, at least in part, the demands of the export contract.

4.2.1 Production Facilities

4.2.1.1 Construction of Production Facilities

Hydro-Québec submitted that the electricity required to supply the proposed exports would be produced by its whole system and that new production facilities will not be constructed to meet these exports. It is Hydro-Québec's position that the proposed exports will not result in the advancement of construction of production facilities which might be eventually required to fulfil energy requirements in the province. Hydro-Québec also stated that new production facilities may be built in the future to serve long-term firm export contracts; in that event, those exports would be the subject of separate applications to the Board.

The Board notes the submissions of several intervenors regarding production facilities. Several intervenors stated that a 30-year permit for short-term transactions could be used to justify new production construction which would have an effect on the environment. They wish to be assured that the proposed exports would not be supplied from new production facilities which would not undergo the public evaluation and approval procedures prescribed by federal and provincial laws. The Grand Council of the Crees (of Québec) and Cree Regional Authority ("GCCQ-CRA") considers that exports of the magnitude envisaged in this application cannot be met solely from hydraulic surpluses. Such exports could, in the short term, result in a continued drawdown of existing reservoirs, reducing Hydro-Québec's ability to generate from existing plants and leading to the advancement of planned generation facilities or the construction of new production facilities, either hydraulic or thermal. The

Natural Resources Defence Council ("NRDC") and the James Bay Committee ("Committee") are concerned about the environmental consequences of the requested permit because such a large export would necessarily result in the advancement of generation facilities by Hydro-Québec, causing serious harm to the environment.

The Sierra Legal Defense Fund Society ("the Fund") believes it undeniable that the generation of the substantial quantity of power proposed for export will produce significant environmental impacts, either through the construction of new facilities and/or alterations in the operation of existing reservoirs. The Fund considers that, without substantially more information, the Board is unable to determine the degree to which the proposed exports would involve the construction of new facilities over the next 30 years and, therefore, to comply with its duties as set out in the Supreme Court's Hydro-Québec decision.

With respect to the impact of the proposed exportation on the environment, the Board notes that Hydro-Québec submitted that the proposed exports would not have any significant environmental effects and consequently provided commensurate evidence on the environmental ramifications of the proposed exports. In consideration of the Supreme Court decision, the Board is of the view that the issue of the environmental impact of this proposal hinges on whether the construction of new production facilities is required to serve, among other needs, the demands of the proposed exports.

The Board recognizes the lengthy lead times required to plan, design, obtain approvals, and construct new production facilities. Accordingly, the Board notes that, during the early years of any permit the Board may issue, the exports could only be supplied from existing facilities, or those currently under construction or approved for construction, and not new facilities constructed to service these exports. Regarding whether new facilities would be constructed to meet potential short-term transactions during the later years of any permit the Board may issue, the Board notes that the duration of those transactions would vary from a few months to a maximum of five years. Moreover, the lead time for the delivery of electricity under those transactions would be relatively short. Finally, the Board notes that substantial capital is required to construct new facilities, that their useful lives generally range from 30 to 50 years or longer, and that short-term sales cannot be the basis for such investments.

Balanced against those short contract durations and delivery lead times is the very lengthy lead time required to construct new long-term facilities. Thus, the Board considers that additional production capacity is likely to be constructed or advanced only to support additional domestic load or long-term firm export commitments. The Board accepts the evidence of Hydro-Québec that the purpose of the requested permit is to authorize export transactions relating to surpluses produced by existing or approved production facilities.

Based on these considerations, the Board is of the view that no new production facilities will be constructed, or advanced, to meet the demands of any export contracts that may be entered into under any permit the Board may issue.

4.2.1.2 Operation of Production Facilities

With respect to the environmental impact of the management of reservoirs associated with exports of surplus power under the requested permit, Hydro-Québec stated that it operates its reservoirs in accordance with various constraints. The requested permit would not modify these existing constraints which would remain within the limits in force. Accepting that normal operation of reservoirs

sometimes has environmental effects which it tries to minimize, Hydro-Québec indicated that no additional effects would result from exports under the requested permit. Furthermore, the Applicant indicated that all of its reservoirs would be involved, reducing the environmental effect on any individual reservoir. Thus, it was Hydro-Québec's position that the environmental effects due to the operation of its production facilities to satisfy the exports would be insignificant or mitigable with known technology.

The GCCQ-CRA noted in its submission that exports of the scale proposed in the application would have environmental effects directly resulting from the operation of the existing hydro system. Fluctuations of water levels within the reservoirs and in downstream bodies of water would be accentuated, affecting erosion and siltation levels, salinity of bays and estuaries, and may have adverse effects on fisheries, navigation and aboriginal peoples, all areas of federal concern.

The Board notes that Subsection 119.06(2) of the Act requires the Board to avoid the duplication of measures taken in respect of the exportation by the Applicant and the government of the province from which the electricity is exported. The Board also notes that the Government of Québec had jurisdiction at the time of construction to consider the environmental effects of the operation of existing production facilities. Furthermore, the operation of the existing facilities complies with provincial environmental requirements, and the requested permit would not modify the existing operating constraints which remain within the limits in force. The Board is of the view, for all of these reasons, that it need not include in the scope of its assessment a consideration of the environmental and directly-related social effects of the operation of these existing production facilities.

4.2.2 Transmission Facilities

Hydro-Québec indicated that it would make use of its existing transmission system in order to transport the electricity proposed to be exported. Hydro-Québec indicated that the requested permit would not, in itself, authorize exports greater than those which it is already authorized to export under existing international power line permits, certificates and licences. Hydro-Québec also indicated that the power and energy limits requested in the application represent the maximum which could be exported over its international power lines operating at their theoretical maximum capacity.

The Board notes that Hydro-Québec's existing transmission facilities have already been subjected to environmental reviews by the appropriate provincial and federal authorities prior to their construction and operation. The Board did not receive any new evidence of environmental effects related to these transmission facilities. The Board previously considered the potential environmental effects of the construction and operation of the international transmission lines for the full range of possible interruptible and/or firm exports over the lines as requested by Hydro-Québec in this application. For existing intraprovincial transmission facilities, as with existing production facilities, Subsection 119.06 (2) of the Act requires the Board to avoid the duplication of measures taken in respect of the exportation by the Applicant and the Government of Québec. The Board notes that the Government of Québec had jurisdiction at the time of construction to consider the environmental effects of the operation of provincial transmission lines. The Board is satisfied that the proposed exports would be transmitted by facilities which have obtained all the necessary permits and certificates and that these facilities would be operating within the applicable provincial and federal standards and guidelines. For all of these reasons, the Board is of the view that it need not include in the scope of its assessment a consideration of the environmental and directly-related social effects of the operation of existing transmission facilities.

4.2.3 Conclusion on the Environmental Considerations

As a result of the foregoing analysis, the Board is satisfied that there could be no potentially adverse effects on the environment of the exportation of electricity under the requested permit.

4.3 The Effect of the Exportation on Provinces Other Than Québec

Hydro-Québec stated that it does not expect the proposed exports to have any negative impacts outside Québec. With respect to the effect of the proposed exports on the reliability of the power systems of neighbouring provinces, the Board notes that Hydro-Québec sent copies of the application to the four Canadian utilities with which it is interconnected. Hydro-Québec stated that the main technical characteristics of any new short-term export contracts under the requested permit, such as contract capacity, delivery points and delivery period, would be identical to those in existing contracts and that electricity to be sold under new contracts would be delivered over existing international power lines. Hydro-Québec also stated that its own analysis had not identified any negative impact on the other utilities' systems. In response to the application, New Brunswick Power, Ontario Hydro and Cornwall Electric stated that they did not expect any reliability problems as a result of the proposed exports. Furthermore, Hydro-Québec stated that it complies with the reliability and safety standards of the NPCC, and that Nova Scotia Power, Ontario Hydro, New Brunswick Power and Hydro-Québec are members of this agency, maintaining close and on-going contacts with it.

The Board has considered the GCCQ-CRA's reliability concerns regarding the requested export quantities. The GCCQ-CRA noted that the requested limit is in excess of the present 4 300 MW capability of Hydro-Québec's existing international power lines, and that the NPCC is a voluntary organization, not a government body, with an uncertain future role over the next 30 years given an evolving electricity system.

The Board notes that the effect of the proposed exports on the reliability of the operation of power systems will depend, in part, on the simultaneous transfer capacity of Hydro-Québec's international power lines. The Board believes that an increase in the transfer capacity would not necessarily involve the construction of new facilities by Hydro-Québec but could result from changes within neighbouring systems and thus may not be the subject of facility applications to the Board. Also, the Board recognizes that the magnitude and the timing of any increases in the transfer capacity during the requested permit term are unknown at this time.

Based on the above considerations, the Board will limit the simultaneous transfer capability to 4 300 MW in any permit it may issue. In this way, the Board assures itself that there will be no unacceptable effects on system reliability during the operating period of the permit.

4.4 Fair Market Access

The Board notes that Hydro-Québec requested authorization to make exports on terms and conditions that are, unknown at the time of the application. This raises the following concerns related to fair market access:

- How can the Board ensure that the fair market access requirements will be satisfied under these conditions?

- What should the maximum duration for individual export contracts be under the requested permits?
- How does the fair market access policy apply to transactions other than sale transfers, such as carrier transfers?

4.4.1 Ensuring That Fair Market Access Requirements Will Be Satisfied

Prior to filing its application with the Board, Hydro-Québec sent letters to the directly interconnected systems of New Brunswick Power, Cornwall Electric, Churchill Falls (Labrador) Corporation Limited and Ontario Hydro regarding fair market access. The Board notes that the responses to these letters, and Ontario Hydro's submission concerning fair market access, indicated that they were satisfied that fair market access would be provided to the proposed exports under the requested authorization.

In its response to submissions, Hydro-Québec noted that the Board stated on page 21 of its Reasons for Decision EWH-1-92;

“Moreover, the Board believes that FMA places an onus on both the exporter and prospective Canadian purchasers to bargain in good faith and work out for themselves mutually acceptable and appropriate fair market access procedures.”

Hydro-Québec submitted that the responses received from neighbouring utilities demonstrate that this obligation had been fulfilled.

The Board notes that fair market access is meant to afford to Canadian purchasers who have demonstrated an intention to buy electricity for consumption in Canada an opportunity to purchase electricity on terms and conditions, including price, as favourable as those offered to an export customer. Moreover, as cited above in Hydro-Québec's reply submission, the Board believes that fair market access places an onus on both the exporter and prospective Canadian purchasers to bargain in good faith and work out for themselves mutually acceptable and appropriate fair market access procedures.

The Board is of the view that the requested authorization would allow exports on terms and conditions that are unknown at this time. The Board recognizes Hydro-Québec's need for such an authorization to permit it to engage in the changing electricity export markets and to optimize the operation of its power system with those of interconnected U.S. utilities, as it does with neighbouring Canadian systems, for maximum economic and reliability benefits. However, before the Board can grant the requested authorization, it must satisfy itself as required by Section 119.06 (2) (c) that Canadians will be given an opportunity to purchase electricity on terms and conditions, including price, as favourable as the terms and conditions of any proposed exports that might be negotiated by Hydro-Québec before any exports are made. Therefore, to ensure that prospective Canadian purchasers will be provided fair market access, the Board will attach to any permits it may issue conditions reflecting the obligations imposed by the Act.

Moreover, to enable Canadians to have fair market access to the electricity proposed for export, the Board will condition any permits it may issue to require Hydro-Québec to provide information on exports as follows:

- for exports of less than one month in duration (i.e. on an hourly, daily or weekly basis), due to the limited time available to Canadians to negotiate a similar purchase, Hydro-Québec will be required to inform accessible Canadian purchasers, on request, of the terms and conditions, including price, under which a particular export was made; and
- for exports lasting a month or more, Hydro-Québec will be required to file a copy of the associated specific contractual arrangements with the Board within fifteen consecutive days after the contract is executed and, upon request, serve a copy thereof on the requesting accessible Canadian purchaser.

The Board notes that the Committee questioned Hydro-Québec's interpretation that the requirement to provide fair market access applies only to neighbouring utilities, stating that Hydro-Québec supplied no evidence that it offered any of its surplus electricity to Canadian consumers at rates such as those which might apply to the exports. The Board notes that Section 119.06 (2) (c) of the Act requires applicants to inform those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale, and to give an opportunity to purchase on terms and conditions as favourable as the terms and conditions specified in an application to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada. The Board is of the view that this requirement is applicable only when those Canadians who have declared an interest in buying electricity have access to transmission in order to effect a purchase.

Finally, the Board has noted Maritime Electric's concern that Hydro-Québec's position with relation to fair market access is not clear, and that Hydro-Québec may not be prepared to provide fair market access to any power and energy that might be exported under the requested permits. Maritime Electric stated that without knowing Hydro-Québec's position, any condition imposed might not achieve the desired objective. Maritime Electric submitted that a public hearing would present an opportunity to find out Hydro-Québec's position and to ensure that a fair market access condition would serve its intended purpose. If the application is not recommended for a public hearing, Maritime Electric stated that any permit issued should have a condition which requires that fair market access be provided to Canadians. The Board considers that the conditions described above, which it will include in any permit it may issue, adequately address Maritime Electric's concern. The Board also considers that such conditions will address the concerns raised by other intervenors on this subject.

4.4.2 Maximum Duration for Individual Export Contracts Under the Requested Permits

Hydro-Québec requested authorization to enter into individual contracts of up to five years duration without having to obtain a specific permit each time and in advance from the Board. Hydro-Québec explained that this flexibility was necessary in order to allow it to compete in the changing North American electricity market.

In support of its request, Hydro-Québec submitted a list of 16 recent Requests for Proposals ("RFP") issued by U.S. and Canadian power systems, which form part of its market. Hydro-Québec stated that of these 16 submissions, 11 were for a period of five years or less, and that based on this contract activity, arrangements of up to five years appeared to be a fundamental characteristic of the short-term market.

While several intervenors acknowledged that North American electricity markets are changing, they stated that a maximum duration of five years for individual export contracts was not necessary in the "spot" market. The GCCQ-CRA noted that the information provided by Hydro-Québec regarding the duration of individual export contracts does not cover a long enough period to demonstrate that there has been any change in the export market, stating that nine of the 16 listed tenders are for less than one year while six others are for more than five years. They noted also that there was only one tender for more than one year and less than five years and concluded that the table does not support Hydro-Québec's application. Au Courant pointed out that Hydro-Québec, in its request to the Board dated 30 November 1993, had mentioned contracts of only one year or less. Au Courant considers that the information supplied by Hydro-Québec concerning recent requests for contract proposals it has received actually showed that those proposals fall into two broad categories; those of less than one year duration and those of more than five years duration. Au Courant concluded that Hydro-Québec's application should concern only contracts of one year or less. Finally, MIREQ stated that in past Board decisions (EHW-1-92 pertaining to the Manitoba Hydro-Electric Board and EW-2-91 pertaining to the British Columbia Hydro and Power Authority and the British Columbia Power Exchange Corporation), the Board had limited the term of individual contracts to three years.

The Board recognizes that as a result of developments in the North American electricity market over the past several years, transactions between electric power systems are often entered into quickly. The Board notes that many transactions are now initiated by buyers through RFPs which generally provide for a short response period. Furthermore, the Board is aware that the ability of potential suppliers to enter into a transaction, without the uncertainty of further regulatory approvals, can be a factor in RFP evaluations. The Board also notes that new buyers and suppliers are entering the market, and that these buyers and suppliers may or may not be directly linked to each other's power system, thus making it difficult to anticipate in advance which systems may have an interest in purchasing electricity.

In addition to the need for suppliers to be able to respond quickly to buyers' power requirements, the Board recognizes that suppliers need the flexibility to meet the short-term export transactions associated with maximizing the benefits of coordinated system operations of the interconnected systems, and the short-term firm capacity and associated energy exports and other mutually beneficial international transactions.

Based on its understanding of the evolving North American electricity market, the Board is of the view that a duration of five years for specific export contracts to be made under any permit it may issue to Hydro-Québec is reasonable and is a proper current definition of short-term transactions. Exports of longer than five years should be made under separate authorizations from the Board.

4.4.3 Transactions Other Than Sale Transfers

The Board notes that Hydro-Québec has requested authorization to make carrier transfers, as well as equichange, adjustment and storage transfers in conjunction with U.S. utilities under the requested permits.

Regarding carrier transfers, for those cases where Hydro-Québec makes carrier transfers for the purpose of exporting electricity from one part of its system to be wheeled through the U.S. and simultaneously imported into another part of the Hydro-Québec system, the net export is zero. There may also be cases where electricity would be generated in the U.S., wheeled through the

Hydro-Québec system and delivered back to the U.S. Such transactions do not fall within the definition of "export" in the Act and therefore do not constitute an activity regulated by the Board. However, for reporting purposes it is necessary that Hydro-Québec keep the Board informed of all carrier transfer transactions involving import-export arrangements.

Regarding the provision of fair market access for transactions and services such as equichange, adjustment and storage transfers, the Board is of the view that there would be no net exports involved.

4.5 Term of the Requested Permits

The Board notes that several intervenors objected to the requested 30-year term for various reasons. Greenpeace, the GCCQ-CRA, and Au Courant noted that Hydro-Québec did not need a 30-year permit to participate in the spot market, stating that this market was already accessible to Hydro-Québec under existing authorizations. MIREQ submits that a 30-year term cannot be explained for temporary surpluses, and is not needed if Hydro-Québec does not expect to make firm exports.

With respect to the regulatory process, MIREQ stated that granting the requested permit would set a bad precedent as other Canadian utilities might try to obtain the same type of permit and bypass entirely the associated electricity regulation process. Also, Au Courant indicated that it considered Hydro-Québec's request for a 30-year permit to be an attempt to seek exemption from the Canadian regulatory provisions for the export of electricity which were enacted to ensure that energy development in Canada will respect the public good. Finally, the Fund considers the application an attempt to avoid almost completely the jurisdiction of the Board and to avoid the consequences of the decision of the Supreme Court's Hydro-Québec decision.

In its response, Hydro-Québec noted that the hydraulic nature of its power system makes it possible for the operation of the Hydro-Québec system to complement the operation of the neighbouring American systems which are predominantly thermal in nature. Accordingly, it requested a permit which would give it, for the longest term possible, the flexibility it wanted with respect to its export market.

In its reply, the Committee restated its position that granting a 30-year permit would go against the spirit of the Act. It considers that the Board cannot and should not issue a blanket permit, but only a restricted permit after hearings to determine the source of the surplus energy. Au Courant pointed out that Hydro-Québec's main reason for applying for a blanket permit was the dramatic changes that had taken place in the U.S. market in the recent past, and questioned Hydro-Québec's belief that it does not foresee much change over the next 30 years. Finally, MIREQ considered that the Act would not be correctly applied if the requested permit were granted, expecting that a 30-year permit would promote the advancement of new facilities by Hydro-Québec.

Regarding an appropriate term for the requested authorizations, several intervenors stated that the term should only be decided after the application had been examined through the public hearing process. In those submissions where a specific permit duration was recommended, a maximum of five years was proposed to allow for certain transactions such as interruptible or diversity sales of surplus electricity.

The Board believes that these characterizations of the application do not reflect the facts in this case, and the Board does not agree that a blanket permit, as applied for, circumvents or goes against the spirit of the Act.

With respect to the information filed by Hydro-Québec regarding its facilities plan and export market development over the requested term, the Board notes that the 1993 Development Plan submitted as evidence covers the period to 2010. No similar information was provided by Hydro-Québec beyond 2010. Without some knowledge of Hydro-Québec's Development Plan beyond 2010, the Board believes that it does not have before it the information necessary to approve a 30-year term, as requested in the application. Furthermore, the Board notes that the types of transactions for which export authorization is sought are not of a long-term nature, but are of a short-term nature, with individual contract terms that will vary from a few months to a maximum of five years.

Based on these considerations, the Board believes that a term which would end on 31 December 2010 for any permit it may issue would be suitable to meet Hydro-Québec's need to respond to short-term market opportunities.

4.6 Maximum Export Quantities

The Board notes that various intervenors stated that the requested authorizations exceed the forecasted export levels in Hydro-Québec's 1993 Development Plan. Specifically, the GCCQ-CRA stated that Hydro-Québec's export markets are such that it does not need a permit with the requested limits, noting that the Development Plan expects exports to reach only 1 500 MW by 2005, while the Committee noted that the requested amounts are far above the projected amounts in the 1993 Development Plan. Also, with respect to the requested quantities, the UQCN considers that the sale of surplus power on the spot market would not justify a permit of the size requested by Hydro-Québec.

In Hydro-Québec's response, it was stated that its objectives concerning exports as outlined in Orientation 28 of the 1993 Development Plan continue to apply. Hydro-Québec stated that a blanket permit will allow it to dispose of occasional surpluses during periods of high hydro or during off-peak periods. Hydro-Québec also stated that it considers that it is not asking for a permit to export more than it is already authorized to export over its currently authorized transmission facilities. As part of its response, Hydro-Québec provided tables showing its export sales since 1974. Hydro-Québec commented that these tables show that it has actually exported similar quantities to those requested in the application, 27 TW.h in 1986 and 29 TW.h in 1987.

In its reply, the Committee stated that it is unacceptable that Hydro-Québec cannot state unequivocally the intended source of the electricity it proposes to export, noting that such quantities do not appear in Hydro-Québec's Development Plan or other public documents. Au Courant, in its reply, considers that it is unclear whether the application is meant to embrace Orientation 28 or to be separate from it, noting that the requested permit is for greater quantities than those connected with the Orientation. MIREQ questioned the truth of Hydro-Québec's statement that it is not asking for a permit to authorize it to export more than it is already authorized to export. With respect to past export sales, the GCCQ-CRA noted that the information supplied by Hydro-Québec showed that its maximum exports to the U.S., which occurred in 1987, were actually 16 TW.h. Furthermore, the average yearly export is only 7.45 TW.h. GCCQ-CRA consider that the tables do not show a market for the quantities of energy which could be exported under the requested permit.

With respect to the proposed exports and Hydro-Québec's 1993 Development Plan, the Board is of the view that there is no relationship between Hydro-Québec's long-term export plans and the short-term

exports proposed under this application. Concerning whether the requested export quantities exceed currently authorized quantities, the Board is of the view that the context of Hydro-Québec's submission illustrates that it is referring to its transfer limit capacity rather than to its total energy authorizations. Finally, regarding maximum energy export quantities, while the Board acknowledges that the requested authorization exceeds Hydro-Québec's historic export levels to the U.S., the Board is satisfied that the export quantities requested under this application will not exceed the quantities of firm and interruptible power and energy that can be exported over Hydro-Québec's interconnection facilities. Moreover, the Board notes that the maximum energy quantities will be reduced by exports made under other licences and permits issued by the Board. Concerning the MW transfer capability, for reasons cited in Section 4.3, the Board will limit the maximum simultaneous transfer limit to 4 300 MW in any permit it may issue.

4.7 Other Issues

4.7.1 Information Filing Requirements

The GCCQ-CRA submitted that the "nature of the solicited permit is incompatible with the legislative framework applicable to electricity exports" and, in particular, is incompatible with paragraphs 6(2)(g), (1), (m) and (y) of the *National Energy Board Part VI Regulations* which remain nominally in force for licence applications. The CCCQ-CRA also specifically assert that the application is not compatible with paragraphs 9(e), (f), (h), (i) and (l) of the draft Electricity Regulations which are appended to the Memorandum of Guidance. Given the absence of information in response to certain requirements of the Part VI Regulations and the Memorandum of Guidance, it was submitted that the Board lacks the jurisdiction to grant the application. Many other intervenors advanced the same or a similar argument in this respect to the Board's jurisdiction and obligations.

In its reply, Hydro-Québec submitted that it has complied with the information requirements of the Board.

The Board is of the view that applications for a permit to export electricity from Canada are subject to the provision of certain information required pursuant to the applicable regulations of the Board.

At the present time, the Board has authorized applicants for a permit to export electricity to file the information requested in the Board's Memorandum of Guidance, pending promulgation of the new Electricity Regulations, particularly those regulations responding to the 1990 amendments to the Act.

The GCCQ-CRA appears to interpret the information filing requirements to mean that the Board cannot issue a permit unless the applicant has satisfactorily provided the specific information set out in each and every information filing requirement. The Board disagrees with that conclusion because it is a question of fact for the Board to decide whether an applicant has complied with the Board's filing requirements in any particular case.

In this case, given the nature of the sought-after permit, it is clear that some of the information filing requirements will not be applicable in circumstances such as those presented by the application of Hydro-Québec. However, the Board is of the view that there has been sufficient compliance with its information requirements to permit it to consider the application in light of the statutory criteria set out in Section 119.06 of the Act. Applications presented to the Board without particulars of proposed

transactions have been considered and approved of by the Board in past cases such as Re BC Hydro (1992) and Re Manitoba Hydro (1993).

Therefore, upon consideration of the matter, the Board finds that the Applicant has complied with the applicable information filing requirements pertaining to the particular circumstances of this application.

4.7.2 Transfer of Previously Authorized Export Quantities to a New Permit

In its reply, MIREQ submitted that Hydro-Québec was transferring export quantities, previously authorized by the Board under existing permits and/or licences, to this new permit. Pursuant to Section 21.2 of the Act, MIREQ points out that all transfers of permits must be approved by the Board.

The Board notes that this is not a transfer of previously authorized export quantities to any permit the Board may issue under this application as existing past authorizations will remain in place. Any export quantities approved under this application would be reduced by exports made under permits and licences previously authorized and currently in force.

4.7.3 Regulation of Particular Export Transactions

Maritime Electric submitted that Division II of Part VI of the Act "establishes a regulatory arrangement which reflects parliamentary interest in regulating the activity, as opposed to the person engaging in it". Thus, according to Maritime Electric, Parliament intended the Board to examine identifiable proposed export transactions. A similar argument was made by the Fund.

The Board believes that, in respect of the Electricity Regulations, the Act establishes a scheme of regulation over the exporter. This view is supported by Section 119.02, which states as follows:

“119.02 No person shall export any electricity except under and in accordance with a permit issued under Section 119.03 or a license issued under Section 119.08.”

The clear terms of this prohibition disclose that Parliament intended that the behaviour of persons be restricted by the Act. The Board has consistently implemented this Parliamentary intention in the discharge of its regulatory mandate concerning electricity exports.

Consequently, the Board is of the view that the manner in which the Board exercises its jurisdiction is properly directed at persons who wish to export electricity from Canada. In any event, it is the Board's view that proposed short-term export transactions may properly be authorized under permit by the Board within the spirit and the letter of the export of electricity regulatory scheme intended by Parliament when it amended the Act in 1990.

4.7.4 Relevant Considerations in Section 119.06

Some intervenors submitted that the criteria set out in Section 119.06 have not been considered by the Board. These are mandatory considerations, it is submitted, which the Board must examine in any export permit application. As stated by the Fund, "under those circumstances, the Board is unable to exercise its jurisdiction to make the determinations required under Section 119.06(2) and the

Regulations or to properly consider terms and conditions under Section 119.09 that the Board might consider 'necessary or desirable in the public interest'."

The Board notes that matters related to all of the statutory criteria have been raised by the interventions. The sufficiency of the information filed and whether the application is deficient in respect of all or any one of those criteria are questions of fact in respect of which the Board can and, indeed, must exercise its discretion. The sufficiency of evidence, provided that there is some evidence on the matters in question, is entirely within the discretion of the Board to determine. The Board is of the view that sufficient evidence is on the record in this matter to support its decision.

In its reply, Maritime Electric also argued with respect to fair market access requirements set out in paragraph 119.06(2)(c), that permits unsupported by identifiable export transactions may not be issued by the Board. The Board notes that there are no provisions in the Act which expressly prohibit the issuance of such permits. The Board has determined that where an application is filed that does not pertain to a definite export the obligation to adhere to the fair market access provisions is not negated. Exporters must still advise Canadians who have expressed a desire to purchase electricity when they will have electricity for sale in the future. Canadians may intervene before this Board if there is a question that they have been, or are being, denied an opportunity to negotiate for the purchase of electricity on terms and conditions as favourable as the terms and conditions under which the electricity may be exported.

Maritime Electric asserts that the Board cannot impose a condition which mandates an applicant to comply with fair market access requirements for contracts entered into subsequent to the issuance of the permit. However, nothing in the Act limits the Board to imposing only conditions which reinforce past behaviour. Indeed, if that were the case there would be no need for the Board to impose any conditions since a failure to satisfy relevant criteria could result in a recommendation to the Governor in Council for a licensing designation.

What Parliament intended, in the view of the Board, was to allow the Board to moderate the future behaviour of permit holders where it was required in the public interest. The language used by Parliament in the Act is not limited to a particular time period and, in any event, the *Interpretation Act* (R.S.C. 1985 c. I-21) provides, in Section 10 that:

"10. The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning."

Accordingly, the Board is of the view that the submission of Maritime Electric is not congruent with the legislative intention exposed in the Act. An appropriate condition may well reinforce the efficacy of the fair market access policy established by the Act.

4.7.5 Requirement for Cost-Benefit Analysis

Some intervenors submitted that the public interest requirements of Section 119.09 requires the Board to carry out, as stated by the Fund, "a cost-benefit analysis that weighs the cost to the Canadian public (both economic and environmental) against the benefits to be obtained". It was the submission of these intervenors that the Board lacks the requisite information which will enable it to make that assessment.

The Board considers that Section 119.09 does not contain any direction from Parliament as to how the Board is to determine the public interest. Furthermore, this section relates to the conditions which the Board may choose to attach to a permit. Thus, there is no nexus between this particular provision and the Board's performance of a cost-benefit analysis.

4.7.6 Duties Arising Pursuant to the Supreme Court of Canada Judgement

Many of the intervenors argue that the Board has obligations, arising pursuant to the Supreme Court Hydro-Québec decision related to the consideration of the environmental effects of upstream facilities. The Board does not accede to the expansive interpretation of the Supreme Court's judgement asserted by these intervenors. In the decision, the Court found that the Board has the jurisdiction to consider upstream environmental effects when production facilities being brought onstream will provide all or part of the electricity being exported. The Court was not asked, nor did it consider, whether or not such jurisdiction is obligatory rather than discretionary. The Court has indicated however that the Board may use this jurisdiction where new facilities are proposed. That has not occurred in this case as the Board, in respect of the scope of its obligations under the *EARP Guidelines Order* and the Act, has concluded that no new generation or transmission facilities would be constructed to facilitate the export of electricity as a result of this application.

The Board has carefully reviewed the application and all submissions to determine the extent of the connection, if any, between the proposed export and facilities which may be required. The Board's conclusion is that no new facilities will be constructed to meet the demands of any export contracts that may be entered into under any permit the Board may issue in respect to the application. Accordingly, it is the view of the Board that it has satisfied the requirements of Section 119.06(2)(b) of the Act and that no added duties arise from the recent judgement of the Supreme Court of Canada.

4.7.7 Resource Planning and Management

A number of intervenors raised concerns respecting the utilization of Demand Side Management Programs, Integrated Resource Planning and wheeling of power. The Board is of the view that, in this particular context, these are matters which are pertinent to the jurisdiction of the Province and are therefore not relevant to the issues before the Board.

4.7.8 Public Notification

Some parties questioned the public notice provided by Hydro-Québec. The Board notes that in compliance with the Act, Hydro-Québec placed a public notice of its application in the Canada Gazette and, pursuant to the Board's requirements, placed its public notice in the largest newspaper in the Applicant's service area. Those actions constituted proper and sufficient notice under the Act and Memorandum of Guidance. The Board also notes that there is no longer a requirement for early public notification for electricity export applications filed with the Board.

Chapter 5

Disposition

After considering the information provided by the Applicant and the interventions and submissions of interested parties under the disposition of Section 119.03 and others of the Act for the issuance of a permit, the Board has not identified any issues which would benefit from further public consideration. Therefore, the Board has decided not to recommend to the Minister that the Governor in Council designate Hydro-Québec's application for licensing.

The Board, having regard to the requirements of the Act, and to all other considerations that appear to it to be relevant, is prepared to issue to Hydro-Québec permits subject to appropriate conditions granting the requested authorizations for a period of 16 years, instead of the requested 30 years. For administrative reasons and to allow the Board to monitor the types of export transactions, the Board will issue two export permits, one for interruptible exports and one for firm exports. Export permits EPE-64 and EPE-65 are attached. The term of the permits will commence on 7 December 1994. Finally, Hydro-Québec is requested to supply to the Board, by the 15th day after the end of each month during the term of the permits, a report setting forth the quantities of power and energy exported or imported and the resulting revenue for each type of transaction authorized under each permit.

The foregoing constitute our Reasons for Decision in the present application of Hydro-Québec pursuant to Part VI of the *National Energy Board Act*.

R. Priddle
Chairman

J.-G. Frédette
Vice-Chairman

A. Côté-Verhaaf
Member

C. Bélanger
Member

R. Illing
Member

K.W. Vollman
Member

R.L. Andrew, Q.C.
Member

Calgary, Alberta
December 1994

Appendix I

Hydro-Québec Major Electrical Installations

Figure A1-1
Hydro-Québec Major Electrical Installations

**Image not supplied
by author
or
Image not available**



PERMIT EPE-64

IN THE MATTER OF Section 119.03 of Division II of Part VI of the National Energy Board Act, and

IN THE MATTER OF an application by Hydro-Québec for authorization to export electricity, filed with the National Energy Board ("the Board") under file No.: 6200-Q001-11.

BEFORE the Board on 17 November 1994.

WHEREAS in an application dated 24 May 1994, Hydro-Québec requested an authorization to export interruptible energy at points on the international boundary between Canada and the United States of America;

AND WHEREAS Hydro-Québec on 2 July 1994 published in the Canada Gazette a notice of the application;

AND WHEREAS the Board has considered comments on, or interventions to, the application;

AND WHEREAS parties interested in buying electricity for consumption in Canada will be given fair market access to any electricity proposed for export under this permit;

AND WHEREAS the Board has determined that the proposed exports will have no effects on provinces other than Québec;

AND WHEREAS pursuant to the *Environmental Assessment and Review Process Guidelines Order* ("EARP Guidelines Order"), the Board has performed an environmental screening and has considered the information submitted by Hydro-Québec ;

AND WHEREAS the Board has determined, pursuant to Section 12 of the EARP Guidelines Order, that there are no potentially adverse environmental effects or social effects directly related to those environmental effects, which may be caused by the proposal and that the nature of public concern about the proposal does not warrant referral for a panel review;

AND WHEREAS the Board has determined, after considering the information provided by Hydro-Québec and the interventions and submissions of interested parties, that further public review of the application is not warranted;

AND WHEREAS Hydro-Québec has provided evidence that any new production facilities that may be built for exports would only be built to serve long term contracts that would be subject to separate permit applications;

IT IS ORDERED THAT Hydro-Québec be and is hereby authorized to export interruptible energy at points on the international boundary between Canada and the United States of America, subject to the following terms and conditions:

1. The term of this permit shall commence on 1 December 1994 and shall end on 31 December 2010.
2. The class of transfers authorized hereunder shall be the sale, exchange, storage, adjustment and carrier transfer of interruptible energy.
3. The energy to be exported hereunder may be transmitted over any international power lines for which the Board has issued or will issue a certificate of public convenience and necessity, or permit.
4. The quantity of energy that may be exported hereunder shall not exceed 30 000 GW.h in any consecutive 12-month period less the amount of energy exported under Permit EPE-65.
5. Hydro-Quebec shall not export power and energy hereunder without first:
 - (i) informing those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale; and
 - (ii) giving an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions which apply to the proposed exports, to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada.
6. Hydro-Québec shall:
 - (i) for exports of less than one month duration, subsequent to the commencement of an export, inform all accessible Canadian purchasers, on request, of the terms and conditions under which a particular export was made.
 - (ii) for exports of one month or more in duration, file with the Board, within fifteen consecutive days of execution, a copy of any specific contractual arrangements associated with an export and, upon request, serve a copy thereof on the requesting accessible Canadian purchaser.

7. With respect to any single export contract for the export of electricity from Canada which is entered into by Hydro-Québec subsequent to the date of this permit, the maximum duration of this permit shall not exceed five years from the date exports commence.

NATIONAL ENERGY BOARD

J.S. Richardson
Secretary



PERMIT EPE-65

IN THE MATTER OF Section 119.03 of Division II of Part VI of the *National Energy Board Act*, and

IN THE MATTER OF an application by Hydro-Québec for authorization to export electricity, filed with the National Energy Board ("the Board") under file No.: 6200-Q001-11.

BEFORE the Board on 17 November 1994.

WHEREAS in an application dated 24 May 1994, Hydro-Québec requested an authorization to export firm energy at points on the international boundary between Canada and the United States of America;

AND WHEREAS Hydro-Québec on 2 July 1994 published in the Canada Gazette a notice of the application;

AND WHEREAS the Board has considered comments on, or interventions to, the application;

AND WHEREAS parties interested in buying electricity for consumption in Canada will be given fair market access to any electricity proposed for export under this permit;

AND WHEREAS the Board has determined that the proposed exports will have no effects on provinces other than Quebec;

AND WHEREAS pursuant to the *Environmental Assessment and Review Process Guidelines Order* ("EARP Guidelines Order"), the Board has performed an environmental screening and has considered the information submitted by Hydro-Québec;

AND WHEREAS the Board has determined, pursuant to Section 12 of the EARP Guidelines Order, that there are no potentially adverse environmental effects or social effects directly related to those environmental effects, which may be caused by the proposal and that the nature of public concern about the proposal does not warrant referral for a panel review;

AND WHEREAS the Board has determined, after considering the information provided by Hydro-Québec and the interventions and submissions of interested parties, that further public review of the application is not warranted;

AND WHEREAS Hydro-Québec has provided evidence that any new production facilities that may be built for exports would only be built to serve long term contracts that would be subject to separate permit applications;

IT IS ORDERED THAT Hydro-Québec be and is hereby authorized to export firm power and energy at points on the international boundary between Canada and the United States of America, subject to the following terms and conditions:

1. The term of this permit shall commence on 1 December 1994 and shall end on 31 December 2010.
2. The class of transfer authorized hereunder shall be the sale transfer of firm power and energy.
3. The energy to be exported hereunder may be transmitted over any international power lines for which the Board has issued or will issue a certificate of public convenience and necessity, or a permit.
4. The quantity of power that may be exported hereunder shall not exceed 4 300 MW.
5. The quantity of energy that may be exported hereunder shall not exceed 3 170 GW.h in any month or 20 000 GW.h in any consecutive 12-month period less the amount of energy exported under any other electricity export authorizations issued to Hydro-Québec by the Board, except under Permit EPE-64.
6. Hydro-Québec shall not export power and energy hereunder without first:
 - (i) informing those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale; and
 - (ii) giving an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions which apply to the proposed exports, to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada.
7. Hydro-Québec shall:
 - (i) for exports of less than one month duration, subsequent to the commencement of an export, inform all accessible Canadian purchasers, on request, of the terms and conditions under which a particular export was made.
 - (ii) for exports of one month or more in duration, file with the Board, within fifteen consecutive days of execution, a copy of any specific contractual arrangements associated with an export and, upon request, serve a copy thereof on the requesting accessible Canadian purchaser.

8. With respect to any single export contract for the export of electricity from Canada which is entered into by Hydro-Québec subsequent to the date of this permit, the maximum duration of this permit shall not exceed five years from the date exports commence.

NATIONAL ENERGY BOARD

J.S. Richardson
Secretary