



## Energy Policy in Quebec — Electric Generation

Philip Raphals

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<b>1. FROM NATIONALIZATION TO 1996.....</b>	<b>3</b>
<b>2. THE BOURASSA ENERGY POLICY.....</b>	<b>3</b>
<b>3. OPPOSITION TO THE GREAT WHALE PROJECT .....</b>	<b>4</b>
<b>4. THE PUBLIC DEBATE ON ENERGY .....</b>	<b>5</b>
<b>5. THE 1996 ENERGY POLICY AND BILL 50 .....</b>	<b>6</b>
5.1. RATEMAKING.....	7
5.2. INTEGRATED RESOURCE PLANNING .....	7
5.3. AUTHORIZATION FOR NEW PROJECTS, EXPORTS AND PURCHASES .....	8
<b>6. CONTROVERSY OVER GENERATION — SECTION 164 .....</b>	<b>8</b>
<b>7. THE RÉGIE DE L'ÉNERGIE AND S. 167 .....</b>	<b>9</b>
7.1. HEARING ON HYDRO-QUÉBEC'S PROPOSAL .....	10
7.2. THE RÉGIE'S RECOMMENDATION .....	11
<b>8. AMENDING THE ACT.....</b>	<b>12</b>
8.1. ELIMINATING GENERATION FROM THE RÉGIE'S JURISDICTION .....	12
8.2. PROJECT APPROVAL (S. 73) .....	12
8.3. RESOURCE PLANNING (S. 72) .....	13
8.4. HERITAGE POOL ELECTRICITY (S. 52.2 AND SCHEDULE 1).....	13
8.5. ACQUIRING ADDITIONAL ELECTRIC POWER .....	14
<b>9. CONCLUSION .....</b>	<b>15</b>

In this paper, we will look at the recent evolution of the electric industry structure in Quebec and the regulatory regime relevant electric generation.

## 1. From nationalization to 1996

While Hydro-Québec was created in 1944, it was only with the nationalization of electric companies in 1963 that it assumed its dominant role in the Quebec electric industry as a vertically integrated monopoly. As distributor, Hydro-Québec directly serves about 97% of the electric load in Quebec. As transporter, it controls the entire high-voltage transmission grid and owns the vast majority of all high-voltage transmission assets in Quebec. As generator, it produces some 90% of the electricity available in Quebec, including purchases from Churchill Falls, Labrador.

Until 1997, Hydro-Québec was “regulated” directly by the provincial government, which set rates and approved major investments and long-term planning documents. Prior to approving Hydro-Québec’s rates or its Development Plan, hearings were held before the Standing Parliamentary Committee on Labour and the Economy.<sup>1</sup> However, the Committee did not produce any written report or recommendations following these hearings. In effect, all major decisions were made by Hydro-Québec either on its own, or subject to the approval of the Quebec government.

## 2. The Bourassa energy policy

The Liberal government elected under the leadership of Robert Bourassa in 1985 adopted as a key policy the development of hydroelectric resources as a tool of economic development.<sup>2</sup> This policy led to the aggressive marketing of heavily discounted electricity to industries willing to relocate to Quebec (especially energy-intensive industries such as aluminum and magnesium smelting),<sup>3</sup> and of long-term contracts for the export of firm power and energy. In both cases, the energy was to be supplied by “advancing” (i.e. constructing in advance of Quebec’s actual needs) the development of hydroelectric facilities which, it was argued, would eventually be required to serve Quebec demand.

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<sup>1</sup> Development Plans, usually with a 10-year planning horizon, were produced annually until 1990, when a three-year planning cycle was adopted. The last full Development Plan was filed in 1993, as the 1996 Plan was suspended pending the outcome of the Public Debate on Energy, discussed below. However, from 1991 through 1995, annual updates were tabled before the Standing Committee.

<sup>2</sup> Government of Quebec, *Energy: Driving Force of Economic Development* (1988), 117 pp.

<sup>3</sup> These discounts took the form of “risk and profit sharing contracts”, where the price of electricity was tied to the market price of the commodity being produced. While it was argued at the time that these contracts would, in the long run, yield the equivalent of the regular industrial rate (Rate L), they were based on over-optimistic commodity price forecasts and in fact are being served at a loss.

As detailed in Hydro-Québec's 1990 Development Plan, Quebec demand was forecast to increase by 43 TWh by 2000 (taking into account 10 TWh of expected reductions from energy efficiency programs). In addition, long-term exports were expected to increase by 7 TWh. A whole series of hydroelectric projects were to be "advanced" to serve this new load, starting with Phase 2 of the La Grande project (consisting of La Grande-1 and 2A, Brisay, and Laforge 1 and 2), to be followed by Sainte-Marguerite-3, the Great Whale complex, la Romaine, and Ashuapmushuan.

While Hydro-Québec maintained (and still maintains) that all its sales were "system power," it became clear in the hearings of the Doyon Commission<sup>4</sup> that, internally, explicit links were made between these sales and individual projects. Thus, La Grande phase 2 (completed in 1994) was linked to the risk-and-profit-sharing contracts signed in the late 80s, Great Whale was associated with the two contracts with the New York Power Authority (NYPA) signed in 1989 (and later cancelled), and SM-3 was linked with the 200-MW contract with Vermont Joint Owners (in force since 1992).

### **3. Opposition to the Great Whale Project**

The emphasis on new hydro development in the Bourassa energy policy provoked considerable opposition. The most vigorous and most heavily publicized opposition was that of the Grand Council of the Crees (of Quebec) which, through a combination of hard work, good luck and significant financial resources was able to mobilize environmentalists in Canada and in the U.S. to oppose the Great Whale project. At the same time, opposition to the SM-3 project drew upon a related but distinct constituency. Unlike the Crees, the Innu of Quebec were deeply divided over the project.

The publication of a full-page ad in the New York Times in 1992, signed by the GCCQ and Greenpeace USA, led to a skillfully managed outcry in Quebec over the use of half-truths to mobilize public opinion.<sup>5</sup> Enormous pressure was brought to bear on Quebec

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<sup>4</sup> The Doyon Commission was a commission of inquiry launched by the Parti Québécois government in 1995 in response to allegations of corruption in the letting of power purchase contracts by Hydro-Québec in the early 1990s. While the Commission found no evidence of such corruption, its broad mandate allowed it to examine many aspects of Hydro-Québec's planning process, as well as many environmental issues related to small hydro. Gouvernement du Québec, *Rapport de la commission d'enquête sur la politique d'achat par Hydro-Québec d'électricité auprès de producteurs privés*, March 31, 1997, 607 pp. (plus appendices).

<sup>5</sup> This outcry turned mainly on the use of the term "cultural genocide" and the allegation that Hydro-Québec was responsible for the drowning of 10,000 caribou at Caniapiscou in 1984. In fact, the report produced by the Parti Québécois government the following year did indeed blame Hydro-Québec's reservoir management for the caribou deaths. Gouvernement du Québec, Secrétariat des activités gouvernementales en milieu amérindien et inuit (SAGMAI), *Rapport du SAGMAI — Noyade des caribous sur la rivière Caniapiscou dese 28 et 29 septembre 1984* (SAGMAI, May 1985).

environmental groups to denounce the ad, and many of them did. The resulting schism between the Crees and their American allies, on one side, and the “loyal” Quebec opposition, on the other, significantly weakened the opposition movement.

While the Crees and the American groups continued to demand that the Great Whale River be “saved” from development, the discourse of the Quebec groups turned primarily on the need for a more democratic decision-making process for energy matters. Through an umbrella group known as the Coalition for a Public Debate on Energy, a broad spectrum of union, environmental and social groups demanded that Hydro-Québec’s planning process be opened up for greater public involvement, and that the goals and means of Quebec’s energy policy be the subject of an in-depth public debate. The Environment Committee of the Parti Québécois was a member of the Coalition, and the PQ included the public debate on energy as part of its platform in its (victorious) 1994 campaign.

#### **4. The Public Debate on Energy**

Within months of taking office, Jacques Parizeau quickly quashed the Great Whale project<sup>6</sup> and announced that his government would carry out a massive Public Debate on Energy. While the formula announced by then Minister of Energy and Resources François Gendron was much criticized by the members of the Coalition, almost all of them eventually agreed to participate. The formula called for an informational phase, consisting of seminars and lectures by a variety of specialists and a commitment by Hydro-Québec to respond to requests for information, and a hearing phase.

For the hearing phase, he named a 15-member board, including representatives of the energy companies, environmentalists, consumer advocates, and Native peoples.<sup>7</sup> The Board toured the province in 1995, holding a series of 21 days of public hearings in nine cities, at which some 300 briefs were presented. To the surprise of most observers, it

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<sup>6</sup> At a press scrum in November 1994, Parizeau stated, apparently without prior consultation with Hydro-Québec, that the Great Whale project should be put “on ice”, as there was no need for it. The day before, the Montreal *Gazette* had carried a report of the yet-to-be-released Conformity Report on the adequacy of Hydro-Québec’s EIS stating that the study, which Hydro-Québec had inaccurately described as having cost \$500 million, would have to be redone.

<sup>7</sup> The panel included vice presidents of Hydro-Québec and Gaz Métropolitain, three environmentalists (including Philippe Dunsky, now Director of the Helios Centre and François Tanguay, formerly Director of Greenpeace Québec and now régisseur at the new Régie de l’énergie), and two Native leaders (Richard Kistabish, an Algonquin, and Rémy Kak’wa Kurtness, former chief of the Innu community of Piekukamiulnutsh). Romeo Saganash, former Deputy Grand Chief of the GCCQ, declined an invitation to sit on the panel, in protest of the Minister’s refusal to consult with the Grand Council concerning the nominations.

succeeded in March 1996 in releasing a unanimous report, under the title *For an Energy Efficient Québec*.<sup>8</sup>

Concerning electricity, the principal recommendations of the report were :

- the creation of a neutral, independent Quebec Energy Board (Régie de l'énergie), to regulate Hydro-Québec as well as natural gas distributors through a quasi-judicial system of public hearings, with the power to set rates and to approve projects and long-term plans,
- an emphasis on energy efficiency as the resource of choice for meeting new energy needs, and
- the use of integrated resource planning (IRP) to ensure that environmental and social concerns were taken into account in energy planning, and that energy efficiency and conservation were treated on a equal footing with generation alternatives.

The report stated that the domestic market was “saturated,” and acknowledged that Hydro-Québec had little interest in developing new large-scale projects, due to their financial risks, but it conspicuously failed to address the issue of building new dams to supply power for exports. The panel emphasized the importance of the restructuring issue, pointing out that competition is not inevitable, and that it can bring significant negative consequences. It urged that the Régie look carefully at market liberalization as one of its first mandates.

## **5. The 1996 Energy Policy and Bill 50**

In launching the Public Debate, Minister Gendron committed himself to using the resulting report as the basis of his new energy policy. When Guy Chevrette inherited the portfolio, he stood by this commitment; true (for the most part) to his word, the energy policy released in 1996 reflects, to a great extent, the recommendations of the Report.<sup>9</sup> Most notably, it calls for the creation of a Régie de l'énergie, as well as the creation of a Quebec Energy Efficiency Agency (l'Agence de l'efficacité énergétique).

Even before tabling the energy policy, the government released its proposed Bill 50, an Act Respecting the Régie de l'énergie (hereinafter “the Act”).<sup>10</sup> As called for by the Public Debate Report, the Board was to have decision-making authority over rates (ss.

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<sup>8</sup> Gouvernement of Quebec, *For an Energy Efficient Québec: Report of the Consultation Panel for the Public Debate on Energy* (1996), 142 pp.

<sup>9</sup> Gouvernement of Quebec, *Energy at the Service of Québec: A sustainable development perspective* (1996), 108 pp.

<sup>10</sup> L.R.Q., c. R-6.01 (1996). The bill was made public before the policy that announced it, on account of the parliamentary deadline for tabling new legislation.

48-52), new projects and exports (s. 73) and Hydro-Québec's planning, to be carried out using integrated resource planning (s. 72).<sup>11</sup> At the same time, the new Régie was to take over the functions of the old Natural Gas Board (Régie du gaz naturel).

The Régie's "mission statement" is provided in section 5, which reads as follows:

**5.** In the exercise of its functions, the Régie shall promote the satisfaction of energy needs through sustainable development. To that end, the Régie shall have due regard for economic, social and environmental concerns and for equity both on the individual and collective planes. The Régie shall also foster the conciliation of the public interest, consumer protection and the fair treatment of distributors.

Thanks to this section, environmental and social perspectives are relevant in all proceedings before the Régie.

### **5.1. *Ratemaking***

Under the Act, the Régie has exclusive jurisdiction over Hydro-Québec's rates. Rates are to be set on the basis of the cost of providing service, including a reasonable return on investment. While there is provision for incentive ratemaking ("performance based ratemaking," or PBR), the general framework is for traditional cost-of-service ratemaking.

### **5.2. *Integrated resource planning***

Integrated resource planning (IRP) is a planning methodology that developed gradually in the United States in the 1980s to resolve some of the problems created by cost-of-service regulation. While there is no "official" definition of IRP, which indeed has been implemented in many different ways, it generally includes the following four elements:

- treating supply-side (generation) and demand-side (energy efficiency and conservation) options on a level playing field for meeting expected energy needs,
- taking environmental and social impacts into account in choosing among options,
- taking risk and uncertainty into account, and
- involving the public.

During the period of conflict over the Great Whale project, many Quebec groups demanded that Hydro-Québec's planning process be reformed to integrate the principles

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<sup>11</sup> These section numbers refer to the final version of the bill, as adopted in December 1996.

of IRP. The acceptance of these principles in the final report of the public debate on energy, the government's energy policy and finally the legislation creating the Régie de l'énergie constituted together perhaps the most important achievement of the energy-environment movement in Quebec.

According to s. 72 of the Act, Hydro-Québec must submit for approval by the Régie a resource plan proposing strategies to establish equilibrium between energy supply and demand, using both supply-side and demand-side means, taking into account economic, social and environmental concerns as well as the risks of each resource. The form, the "tenor" and the periodicity of the plan are to be determined by regulation to be adopted by the Régie, subject to government approval.

### **5.3. Authorization for new projects, exports and purchases**

Under s. 73 of the Act, Hydro-Québec requires the authorization of the Régie to construct any assets related to the generation, transmission or distribution of electricity, in the cases and under the conditions provided for in a regulation to be adopted by the Régie (subject to government approval). This power is in a sense complementary to IRP, in that it is only once a resource plan has been determined that a utility should normally be in a position to request authorization for the construction of particular plants. However, this relationship is not made explicit in the Act.

S. 73 also requires approval of the Régie for Hydro-Québec's exports, and for a number of other utility actions. Authorization for Hydro-Québec's power purchases is required under s. 74 (which does not have any associated regulation).

## **6. Controversy over generation — section 164**

While Bill 50 largely reflected the report of the public debate, it contained one important provision that seemed to go directly counter to the Report. Section 164 called for the Board to advise the government, within six months, as to whether or not generation should be removed from its mandate, at which time the government could eliminate the Board's control over generation by order-in-council, without amending the Act.

This one provision generated more controversy than the rest of the bill put together. Even the chair of the Public Debate panel, Alban D'Amours, appeared before the Parliamentary Commission to express his opposition to this provision. Virtually all observers agreed that regulatory control over generation was essential to the Régie's mandate, in order maintain the broad consensus established by the panel.

There is little doubt that s. 164 reflected the views of the new CEO of Hydro-Québec, André Caillé, named to that post just a few months earlier. Caillé was appointed by Premier Lucien Bouchard soon after he took office, after Jacques Parizeau resigned after the narrow defeat of the 1995 referendum. It was rumoured that Caillé, the successful



CEO of Gaz Métropolitain, Quebec's largest gas distributor, took the job on the condition that he would have a free hand to run the Crown corporation as a commercial enterprise.

In its own comments on Bill 50, Hydro-Québec made clear that, in its view, generation was fast becoming a commodity supplied by competitive markets, and thus should be exempt from regulation. While Caillé had failed to persuade the Minister to remove generation from regulation altogether in the draft bill, he did obtain s. 164 as a compromise solution.

The public outcry over s. 164 led the Minister (now Guy Chevrette) to replace it with a provision which, while formulated very differently, was apparently believed by the government and by Hydro-Québec to have the same effect as the old s. 164. The new provision, s. 167 of the Act as adopted reads :

- 167.** On the proposal of Hydro-Québec, the Régie shall, within six months of the coming into force of this section, advise the Government on a procedure for the determination and implementation of rates for the supply of electric power in respect of a consumer or class of consumers referred to in section 52.

The government shall determine, by order-in-council, for purposes of sections 1 and 52, in particular, the procedure for the determination and implementation of rates for the supply of electric power mentioned in the preceding paragraph.

The Régie shall also, within a period fixed by the Government, advise it on the opportunity, the conditions and the procedure for the liberalization of electricity markets.<sup>12</sup>

As we shall see in the following pages, the Régie found this provision to have a meaning very different than the one intended by Hydro-Québec. As interpreted by the Régie, s. 167 is not equivalent to the old s. 164, and does not open the door to removing generation from the Régie's mandate. However, to date, the government has yet to act on its recommendation, and seems to reject its interpretation of s. 167. This has led to confusion and near-paralysis in the efforts to establish a coherent regulatory regime for Hydro-Québec.

The *Act Respecting the Régie de l'énergie*, was adopted unanimously on December 19, 1996, following two days of debate in committee. In those debates, the new s. 167 was adopted without discussion, probably reflecting the fact that neither the opposition members nor the Minister were entirely sure what it meant.

## **7. The Régie de l'énergie and s. 167**

The Régie began to function in May 1997 though, with respect to natural gas, it in many ways simply continued to function as it always had. While the legislation and the board

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<sup>12</sup> Our translation. The second and third paragraphs have not yet been put in force.

members were new, much of the staff as well as the internal procedures simply carried over from the former Régie.

The government's nominations to the Régie were not without controversy. The nominating committee was chaired by Deputy Minister for Natural Resources Michel Clair who, it turned out, was to become an executive vice president at Hydro-Québec just days after the committee submitted its report.<sup>13</sup> As Chair, the government named Jean A. Guérin, a former board member of Gaz Métropolitain who was reputed to have close personal ties to Hydro-Québec CEO André Caillé, who indeed had been CEO of Gaz Mét during Guérin's tenure on the board of directors.<sup>14</sup> Of the other board members, three had been closely associated with the public debate on energy (panel members André Dumais (ex-VP of Shell Oil) and François Tanguay (ex-director of Greenpeace Quebec), and Hydro-Québec economist Tony Frayne. The others were mainly selected from Quebec's administrative tribunals.

As noted earlier, the language of s. 167, inserted into the Act to replace a provision that would have allowed the government to remove the Régie's jurisdiction over generation by executive order, is far from clear. This provision was brought into force on February 11, 1998, creating an obligation on the part of the Régie to file a recommendation with the government concerning a proposal from Hydro-Québec. That proposal was filed in late February.

### **7.1. Hearing on Hydro-Québec's proposal**

Under Hydro-Québec's proposal (R-3398-98), its generation would be treated, for regulatory purposes, as power purchased by HQ's Distribution Group from its Energy Services Group.<sup>15</sup> Relying on s. 52 of the Act (imported from the former *Act Respecting the Régie du gaz naturel*), whereby the cost of purchased energy must be flowed through to the customer without any markup, HQ argued that, once the transfer price for energy was fixed, that cost must simply be passed on to consumers in their rates.

Of course, if the transfer price itself were set based on the true cost of service, applying such a mechanism would make little difference. Under Hydro-Québec's proposal, however, this transfer price would *not* be based on the utility's cost of service, but rather would be derived from existing rates (by subtracting an amount representing the cost of transmission from the rates charged to industrial consumers (rate L)). Thus, there would be no independent (or public) determination of the actual cost of service for generation. Indeed, as HQ made clear in the hearing, the very purpose of the proposal is to establish a

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<sup>13</sup> The McGill Centre for the Study of Regulated Industries asked the Attorney General to investigate the situation, but received no response.

<sup>14</sup> These unusual circumstances have led many to question the Régie's impartiality, though rarely for attribution.

<sup>15</sup> Following a recent reorganization, Energy Services has now been folded into HQ's Generation Group.

veil protecting HQ's generation activities from public or regulatory scrutiny. It argued that, as a result of the new competitive market for energy in the United States, its commercial interests required complete confidentiality concerning its generation activities.<sup>16</sup>

Hydro-Québec also made clear during the hearings that its proposal could not be implemented without a series of amendments to the Act itself, in order to completely eliminate the Régie's jurisdiction over generation. The amendments required would include removing:

- the requirement that the Régie establish a ratebase of generation equipment in its ratesetting process,
- the need for the Régie's authorization for new generation projects,
- the need for the Régie's authorization for exports, and
- the inclusion of specific generating projects in the resource plan.

The active interveners in the hearing were virtually unanimous in their opposition to this proposal. Indeed, disparate groups that approached each other with considerable distrust gradually came to realize that they shared a common cause in their attempts to establish a rigorous regulatory framework to govern Hydro-Québec. These included environmental groups, low-income consumer groups, industrial consumers, private producers (small hydro) and the Grand Council of the Crees.

## **7.2. *The Régie's recommendation***

The Régie's recommendation A-98-01, dated August 11, 1998, came down definitely against Hydro-Québec's proposal. The Régie first pointed out what was by now obvious — that the proposal was not consistent with existing law —, and furthermore advised against modifying the Act in the ways proposed by HQ.

Furthermore, the Régie judged that Hydro-Québec's interpretation of the language of the Act was itself faulty. For Hydro-Québec, the term "supply tariff" in s. 167 refers to the commodity (energy) portion of rates only, even though the same term has been used for many years to refer to the "bundled" rates charged to consumers (which include costs related to generation, transmission, distribution and customer service). The Régie rejected this interpretation, calling it an "error in law."

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<sup>16</sup> These arguments were refuted by Peter A. Bradford, former chair of the New York Public Service Commission, who appeared as an expert witness (together with the author of this text) on behalf of the Regroupement national des Conseils régionaux de l'environnement du Québec (RNCREQ), a province-wide environmental association.

The Régie further judged that s. 52, which, as described in the previous section, requires that energy costs be passed through without markup, could not be applied to energy generated by Hydro-Québec and transferred from one of its departments to another, but only to energy purchased by Hydro-Québec from other producers.

Thus, the Régie found Hydro-Québec's proposal to be not only inadvisable, but technically incompatible with the provisions of the Act on which it was based. In so doing, it made it much more difficult (if not impossible) for the government to simply reject its recommendation and adopt Hydro-Québec's proposal, without amending the Act.

## **8. Amending the Act**

In the spring of 2000, the Government of Québec — Hydro-Québec's sole shareholder — finally acted, forcing a bill through the legislature that removed all jurisdiction concerning generation from the Régie.<sup>17</sup> As a result, all public input into Hydro-Québec's generation planning was eliminated — even the consultation processes deemed inadequate by the Public Debate panel.<sup>18</sup> While regulatory approval is still needed for electricity purchases, the Régie has only rudimentary oversight powers, and contracts must be awarded based on the lowest price. These amendments are described in the following sections.

### **8.1. Eliminating generation from the Régie's jurisdiction**

The most fundamental change proposed by the Bill is the removal of all matters related to electric generation from the jurisdiction of the Régie, beginning with Section 1, which is modified so as to remove production from the scope of activities to which the Act applies.

As well, all reference to generating facilities is removed from the sections concerning project approval (s. 73), security of supply (s. 31), resource plans (s. 72) and ratemaking (s. 49), as detailed below.

### **8.2. Project approval (s. 73)**

The Bill modifies s. 73 of the Act by removing the need for Régie approval both for the construction or acquisition of generating facilities and for the export of electricity.

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<sup>17</sup> Bill 116, *An Act to amend the Act respecting the Régie de l'énergie and other legislative provisions*.

<sup>18</sup> There remains a purely consultative environmental hearing process, which has no mandate to review Hydro-Québec's planning.

In removing production assets from those for which Régie approval is required, the Bill returns responsibility for authorizing Hydro-Québec's new generation projects to the provincial Cabinet, where it was before the Act was adopted in 1996.

Similarly, in losing its jurisdiction over exports, the Régie can no longer verify the impact of electricity exports on rates paid by Québec consumers, or otherwise ensure that exports do not harm their interests, as called for in the government's 1996 energy policy.

### **8.3. Resource planning (s. 72)**

Under the original Act, Hydro-Québec was obliged to submit a resource plan for approval to the Régie. However, because the Régie never adopted the regulation mentioned in this section, no resource plan was ever submitted.

This provision reflected the approach known as integrated resource planning (IRP), as is appropriate for a vertically integrated near-monopoly like Hydro-Québec. Under Bill 116, this resource plan (in which the regulated utility Hydro-Québec selects among supply- and demand-side resources to meet its demand) is replaced with a supply plan (in which Hydro-Québec-Distribution contracts with suppliers, including Hydro-Québec-Generation).

It should be noted that, while the supply plan refers to satisfying the needs of Quebec markets "after application of energy efficiency measures," the Régie appears not to have any direct power to require a distributor to undertake such measures, as it did in resource plan under the original formulation of s. 72. Under s. 74, Hydro-Québec-Distribution must submit its "commercial programs" for approval by the Régie, but no time periods are specified, nor is the Régie empowered to adopt a regulation allowing it to specify requirements for energy efficiency programs.

### **8.4. Heritage pool electricity (s. 52.2 and Schedule 1)**

Under Chapter IV of the original Act, the Régie had exclusive jurisdiction to set Hydro-Québec's rates for both the supply and the transmission of electricity. Section 49 sets out a traditional cost-of-service methodology (while also providing for incentive mechanisms), based on a regulated rate of return on a rate base composed of assets used for the generation, transmission and distribution of electricity.

Bill 116 removed generation assets from the rate base, instead treating the supply of electricity as a contractual arrangement between Hydro-Québec-Distribution and Hydro-Québec-Production. In so doing, it is roughly equivalent to the proposal Hydro-Québec made in the 1998 hearings under s. 167, which was sweepingly rejected by the Régie in its first (and only) major decision on Hydro-Québec to date.<sup>19</sup>

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<sup>19</sup> A-98-01.

More specifically, the Bill creates the concept of “heritage pool electricity,” whereby Hydro-Québec-Distribution can purchase up to 165 TWh of electricity from Hydro-Québec-Production for a fixed price. In Hydro-Québec’s Proposal, this transfer price was to be based on current industrial rates (Rate L), minus a transmission component to be fixed by the Régie. Under the Bill, the transfer price is simply fixed by fiat at an average value of 2.79¢/kWh, the same amount Hydro-Québec had proposed.<sup>20</sup> According to statements by the Minister and to the Merrill Lynch study, this rate includes a return on equity of 18%.

Total electricity consumption in Québec in 1999 was just 147 TWh, meaning that, under the structure proposed by the Bill, the remaining 18 TWh of electricity available for the “heritage pool” would revert to Hydro-Québec-Production for export. Preliminary analysis shows that, at an average price of 2.79¢/kWh, the revenues from these 147 TWh would cover all the costs of the entire generating system, including a rate of return somewhat less than 10%. This implies that the 15-18 TWh available retained by HQ-Production is in effect already paid for (subsidized) by domestic consumers.

Hydro-Québec currently expects demand to reach 165 TWh in 2004 or 2005.

### **8.5. Acquiring additional electric power**

Bill 116 requires Hydro-Québec-Distribution to acquire electric power above and beyond the heritage pool electricity through competitive tenders, as set out in sections 74.1 and 74.2. Under these provisions :

- ♦ the Régie must approve a procedure for the tenders (within 90 after it is proposed by Hydro-Québec), and a code of ethics, but is not directly involved in the tender process,
- ♦ the procedure must grant equal treatment to all supply sources and select the winning supplier based on price alone; thus, it appears that the Régie has no power to require Hydro-Québec-Distributor to take environmental or social concerns into account in acquiring electric power;

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<sup>20</sup> In a report commissioned by the Minister of Natural Resources in the spring of 1999, Prof. Mark Jaccard, former chair of the British Columbia Utilities Commission, also proposed the use of an “entitlement contract” between HQ-Production and HQ-Distribution. However, he proposed that the initial entitlement price be derived from a Fully Allocated Cost of Service study conducted by Hydro-Québec and reviewed by the Régie, pointing out that such a study would not compromise Hydro-Québec’s competitive position. Mark Jaccard and Trent Berry, *Confidential Proposals for Establishing the Price of Existing Hydro-Québec Supply to Québec Consumers and for Creating Competition for New Wholesale Supplies* (March 12, 1999) p. 6.

- ♦ the Régie oversees the application of the tender procedure and the code of ethics. However, its only power in this regard is to report its findings to Hydro-Québec and to the selected supplier. It appears that these findings are not made public, nor are they reported to the unsuccessful candidates.

## **9. Conclusion**

In the new context created by Bill 116, the Régie is but a faint reflection of what it was meant to be, as seen in the report of the Public Debate on Energy, the government energy policy of 1996 and the original Bill 50. Decision-making concerning generation once again takes place behind closed doors, with no structured public input at all. With the creation of the Régie de l'énergie, Québec's environmental and social movements were confident that there would at last be an appropriate forum where their concerns about large-scale energy developments would be addressed. For the most part, these groups remain so demoralized by this crushing defeat that real debate about the future of energy policy in Québec has not yet begun.