

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 24, 2005

In Reply Refer To:
Ontario Energy Trading International Corp.
Docket No. ER02-1021-004

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Jerry L. Pfeffer, Esq.
Attorney for Ontario Energy Trading International Corp.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Dear Mr. Pfeffer:

1. On April 11, 2005, as supplemented on May 26, 2005, Ontario Energy Trading International Corp. (Ontario Energy) filed an updated market power analysis pursuant to the requirements of the Commission's April 11, 2002 Order granting Ontario Energy authority to sell electric energy and capacity in United States markets at market-based rates¹ and in accordance with the Commission's orders addressing the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.² As discussed below, we conclude that Ontario Energy satisfies the Commission's standards for market-based rate authority.

2. Ontario Energy states that it is a wholly-owned marketing subsidiary of Ontario Power Generation, Inc. (OPG), a merchant generating company incorporated under the laws of Canada and located in the Province of Ontario, Canada. All of the shares of OPG are held in the name of the Provincial Government of Ontario.

¹ See *Ontario Energy Trading International Corp.*, 99 FERC ¶ 61,039 (2002) (April 11 Order), *reh'g denied*, 100 FERC ¶ 61,245 (2002) (Rehearing Order).

² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

3. Ontario Energy states that OPG does not own or operate any transmission facilities, nor does it have a franchised service area in either the United States or Canada. Ontario Energy states that, instead, all transmission facilities in Ontario are owned by HydroOne Inc. (HydroOne), and are operated by the Ontario Independent Electricity System Operator (IESO).³ Ontario Energy states that pursuant to the Commission's findings in the Rehearing Order, OPG, HydroOne and the IESO are nominally affiliated, given the fact that while each has its own separate board of directors, both OPG and HydroOne are owned by the Province of Ontario, which also has authority to appoint members to the IESO board.

4. Ontario Energy states that OPG owns 22,645 Megawatts (MW) of generating capacity registered in the IESO market, all of which is located entirely in Ontario. Ontario Energy states that the Ontario market where OPG owns and controls generation resources has connections to U.S. transmission facilities operated by the New York Independent System Operator (NYISO), the Michigan Electric Coordinator System (MECS), and Minnesota Power. Ontario Energy states that MECS and Minnesota Power are now part of a broader market operated by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

Procedural Matters

5. Notice of Ontario Energy's April 11, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 22,020 (2005), with interventions or protests due on or before May 2, 2005. Notice of Ontario Energy's May 26, 2005 supplement was published in the *Federal Register*, 70 Fed. Reg. 33,743 (2005), with interventions or protests due on or before June 16, 2005. None was filed.

Discussion

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁴ As discussed

³ IESO is the successor entity, as of December 2004, to the Ontario Independent Electricity Market Operator (IMO). It functions as an independent entity with authorizations and responsibilities similar to those of a regional transmission organization.

⁴ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

below, the Commission concludes that Ontario Energy satisfies the Commission's standards for market-based rate authority.

7. In its April 14 and July 8 Orders, the Commission adopted two indicative screens for assessing generation market power. Ontario Energy has prepared both the pivotal supplier and the wholesale market share screen analyses for the NYISO, MECS, and Minnesota Power. The Commission has reviewed Ontario Energy's generation market power screens for these control areas and has determined that Ontario Energy passes both the pivotal supplier and wholesale market share screens. Accordingly, the Commission finds that Ontario Energy satisfies the Commission's generation market power standard for the grant of market-based rate authority.

8. Ontario Energy states that in the Rehearing Order, in the proceeding originally granting it market-based rate authority, the Commission found that, for the purposes of market power analyses, OPG and the IESO are affiliated. However, Ontario Energy asserts that the Commission also found that the IMO provides open access transmission service on a comparable, non-discriminatory basis. In addition, Ontario Energy affirms that neither OPG, Ontario Energy, nor any of their affiliates own or control transmission facilities in the United States. Further, no intervenors have raised transmission market power concerns. Based on Ontario Energy's representations, the Commission finds that Ontario Energy satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

9. Ontario Energy states that it does not control: (i) fuel supply; (ii) fuel transportation facilities in excess of its needs; (iii) pollution emission credits; or (iv) any other resources that would give rise to vertical market power concerns. Furthermore, Ontario Energy states that the resources of this nature that Ontario Energy or OPG does control (that do not exceed its own needs) are for use in the Ontario market. In addition, no intervenors have raised barrier to entry concerns. Based on Ontario Energy's representations, the Commission is satisfied that Ontario Energy cannot erect barriers to entry.

10. Ontario Energy states that it cannot engage in affiliate abuse or reciprocal dealing. Specifically, Ontario Energy states that neither OPG, Ontario Energy, nor any of their affiliates have a franchised utility service located in the United States. Ontario Energy asserts that, instead, its affiliates generally conduct business in Ontario, or at the border, subject to the laws and regulatory authority of Canada. In addition, no intervenors have raised affiliate abuse concerns. Based on Ontario Energy's representations, we find that Ontario Energy satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

11. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (i) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (ii) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁶

12. Ontario Energy must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁷ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Ontario Energy is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission

⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

⁶ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁷ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

13. Ontario Energy is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Magalie R. Salas,
Secretary.